WISCONSIN ADMINISTRATIVE REGISTER

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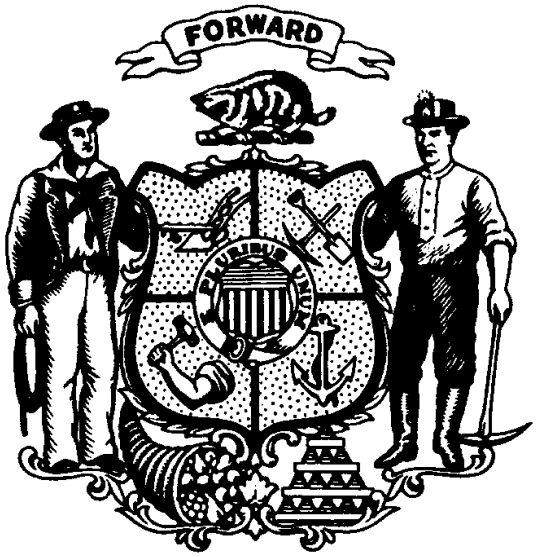

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EMERGENCY RULES NOW IN EFFECT

Under s. 227.24, Stats., state agencies may promulgate rules without complying with the usual rule–making procedures. Using this special procedure to issue emergency rules, an agency must find that either the preservation of the public peace, health, safety or welfare necessitates its action in bypassing normal rule–making procedures.

Emergency rules are published in the official state newspaper, which is currently the Wisconsin State Journal. Emergency rules are in effect for 150 days and can be extended up to an additional 120 days with no single extension to exceed 60 days.

Extension of the effective period of an emergency rule is granted at the discretion of the Joint Committee for Review of Administrative Rules under s. 227.24 (2), Stats.

Notice of all emergency rules which are in effect must be printed in the Wisconsin Administrative Register. This notice will contain a brief description of the emergency rule, the agency finding of emergency, date of publication, the effective and expiration dates, any extension of the effective period of the emergency rule and information regarding public hearings on the emergency rule.

EMERGENCY RULES NOW IN EFFECT (2)

Commerce

(PECFA – Chs. Comm 46–47)

1. Rules adopted creating **ch. Comm 46**, relating to "Petroleum Environmental Cleanup Fund Interagency Responsibilities," and relating to site contaminated with petroleum products from petroleum storage tanks.

Exemption From Finding of Emergency

On September 22, 1999, the Joint Committee for Review of Administrative Rules adopted a motion pursuant to s. 227.26 (2) (b), Stats., that directs the Departments Commerce and Natural Resources to promulgate as an emergency rule, no later than October 22, 1999, the policies and interpretations under which they intend to administer and implement the shared elements of the petroleum environmental cleanup fund program.

In administering the fund, the Departments had previously relied upon a Memorandum of Understanding for classifying contaminated sites and addressing other statements of policy that affect the two Departments. The rule that is being promulgated details the policies and interpretations under which the agencies intend to administer and guide the remedial decision making for sites with petroleum product contamination from petroleum product storage tank systems.

The rule defines "high priority site," "medium priority site, " and "low priority site," and provides that the Department of Natural Resources has authority for high priority sites and that the Department of Commerce has authority for low and medium priority sites. The rule requires transfer of authority for sites with petroleum contamination in the groundwater below the enforcement standard in ch. NR 140 from the Department of Natural Resources to the Department of Commerce. The rule also establishes procedures for transferring sites from one agency to the other when information relevant to the site classification becomes available.

Publication Date: October 20, 1999
Effective Date: October 20, 1999
Expiration Date: March 18, 2000
Hearing Date: November 18, 1999
Extension Through: May 16, 2000

2. Rules adopted amending **s. Comm 47.53**, relating to appeals of decisions issued under the Petroleum Environmental Cleanup Act (PECFA) program.

Finding of Emergency

The Department of Commerce finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

The department is receiving funds from a bonding initiative to enable it to issue approximately 3,500 decisions on applications for PECFA funding which had been awaiting the availability of funding. Because these decisions will be issued over a very short time frame, parties receiving decisions and law firms representing them, will be required to review and analyze a large volume of decisions to determine whether they wish to appeal specific departmental decisions. Given the large number of decisions and the normal rate of appeals, it is reasonable to expect that the public will be required to prepare and file a large volume of appeals within a short time period. Attorneys, lenders and consultants representing multiple claimants have expressed concern about the workload associated with having to review decisions and draft appeals on the higher volume of decisions issued by the department within the current 30 day window. The emergency rule temporarily expands the filing period from 30 days to 90 days to provide additional time to evaluate decisions and determine whether an appeal should be filed. The rule covers the time period when the highest volume of decisions are to be issued.

Publication Date: February 15, 2000
Effective Date: February 15, 2000
Expiration Date: July 14, 2000
Hearing Date: March, 27, 2000
[See Notice this Register]

EMERGENCY RULES NOW IN EFFECT

Crime Victims Rights Board

Rules adopted creating **ch. CVRB 1**, relating to the rights of crime victims.

Finding of Emergency

The Crime Victims Rights Board finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

The Crime Victims Rights Board was created by 1997 Wis. Act 181, effective December 1, 1998, to enforce victims' rights established by Wis. Const. Art. I, s. 9m, adopted in 1993. The Wisconsin Constitution states that the Legislature shall provide remedies for the violation of victims' constitutional rights. The

Board's process represents the only means of enforcing the remedies available to victims of crime who are not provided with the rights guaranteed to them by the Wisconsin Constitution and the Wisconsin statutes. The Board can issue reprimands to correct violations of victims' rights, seek forfeitures in egregious cases, and seek equitable relief to enforce victims' rights. The Board can also work to prevent future violations of victims' rights by issuing reports and recommendations on crime victims' rights and services.

Complaints must be presented to the Department of Justice before they can be presented to the Board. The Department estimates that it receives 200 complaints annually involving the treatment of crime victims. The Department has no authority to enforce victims' rights; the Department can only seek to mediate disputes. Of those complaints, approximately 25 per year cannot be resolved to the parties' satisfaction, and are therefore ripe for the Board's consideration. There are presently 5 complaints that could be referred to the Board if the Board were able to receive and act on complaints.

Until the Board establishes its complaint process by administrative rule, it is unable to provide the remedies constitutionally guaranteed to crime victims.

Publication Date: **September 17, 1999**
Effective Date: **September 17, 1999**
Expiration Date: **February 14, 1999**
Hearing Date: **November 9, 1999**
Extension Through: **April 13, 2000**

EMERGENCY RULES NOW IN EFFECT

Employe Trust Funds

Rules adopted revising **s. ETF 20.25 (1)**, relating to the distribution to annuitants from the transaction amortization account to the annuity reserve under 1999 Wis. Act 11.

Finding of Emergency

The Department of Employe Trust Funds, Employe Trust Fund Board, Teacher Retirement Board and Wisconsin Retirement Board find that an emergency exists and that administrative rules are necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

The Public Employe Trust Fund was created for the purpose of helping public employes to protect themselves and their beneficiaries against the financial hardships of old age, disability, death, illness and accident. The Trust Fund thus promotes economy and efficiency in public service by facilitating the attraction and retention of competent employes, by enhancing employe morale, by providing for the orderly and humane departure from service of employes no longer able to perform their duties effectively, and by establishing equitable benefit standards throughout public employment. There are approximately 102,000 annuitants of the Wisconsin Retirement System, of whom about 80% reside throughout the State of Wisconsin. The Department of Employe Trust Funds estimates that up to 7,000 public employes covered by the Wisconsin Retirement System will retire and take annuity benefits effective during 1999.

WRS participants who retire during 1999 are not eligible to have their retirement benefits calculated using the higher formula factors for pre–2000 service which are provided by the treatment of Wis. Stats. 40.23 (2m) (e) 1. through 4. by 1999 Wis. Act 11. Section 27 (b) 2. of the Act directs that any funds allocated to the employer reserve in the Trust Fund as a result of the $4 billion transfer mandated by the Act, which exceed $200,000,000 shall be applied towards funding any liabilities created by using the higher formula factors with respect to pre–2000 service.

If the existing administrative rule mandating proration is not revised, then the distribution of the funds transferred into the annuity reserve by Act s. 27 (1) (a) of 1999 Wis. Act 11 will be prorated with respect to annuities with effective dates after December 31, 1998, and before January 1, 2000. The extraordinary transfer of funds from the Transaction Amortization Account (TAA) mandated by 1999 Wis. 11 causes funds, which would otherwise have remained in the TAA to be recognized and fund annuity dividends in later years, to instead be transferred into the annuity reserve in 1999 and paid out as an annuity dividend effective April 1, 2000. Normally, annuities effective during 1999 would receive only a prorated dividend. If this occurred with respect to this extraordinary distribution, then annuitants with annuity effective dates in 1999 would be deprived of a portion of the earnings of the Public Employe Trust Fund that would otherwise have affected their annuities as of April 1, 2001 and in subsequent years.

Promulgation of an emergency rule is the only available option for revising the effect of Wis. Adm. Code s. ETF 20.25 (1) before December 31, 1999. Accordingly, the Department of Employe Trust Funds, Employe Trust Funds Board, Teacher Retirement Board and Wisconsin Retirement Board conclude that preservation of the public welfare requires placing this administrative rule into effect before the time it could be effective if the Department and Boards were to comply with the scope statement, notice, hearing, legislative review and publication requirements of the statutes.

Publication Date: **December 27, 1999**
Effective Date: **December 31, 1999**
Expiration Date: **May 29, 2000**
Hearing Date: **February 11, 2000**

EMERGENCY RULES NOW IN EFFECT

Department of Financial Institutions
Division of Securities

Rules adopted revising **s. DFI–Sec 5.01 (4),** relating to investment adviser representative competency examination grandfathering provisions.

Finding of Emergency and Analysis

The Division of Securities of the Department of Financial Institutions for the State of Wisconsin finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency follows:

The Division recently adopted for January 1, 2000 effectiveness as part of its annual rule revision process for 1999, a new administrative rule in s. DFI–Sec 5.01(3) that prescribes a new examination requirement for investment advisers and investment adviser representatives seeking licensure in Wisconsin on or after January 1, 2000. That new examination requirement, which includes completely revised Series 65 and Series 66 examinations, was developed over a 3–year period by a Project Group of the North American Securities Administrators Association ("NASAA").

The new NASAA examination requirement (which also included certain "grandfathering"/examination–waiver provisions) was approved by vote of NASAA member states (including Wisconsin) at the NASAA 1999 Spring Conference to become effective on December 31, 1999. The NASAA membership vote was accompanied by a recommendation that for uniformity purposes, each NASAA member state complete the necessary steps to adopt and have effective by January 1, 2000, the new examination requirement conforming to the NASAA format in all respects.

Following the adoption on November 18, 1999 by the Division of the new investment adviser examination requirement in s. DFI–Sec 5.01(3) as part of the Division's annual rule revision process, it was noted that the "grandfathering"/examination waiver

provisions that had been included in s. DFI–Sec 5.01(4) did not track the NASAA Model language in two respects.

Because it is critical that the grandfathering provisions for the new Wisconsin investment adviser examination requirement be uniform with those of the other NASAA member states as of the coordinated January 1, 2000 date so that applicants for licensing in Wisconsin receive equivalent treatment to that accorded them by other states in which they may be seeking licensure, this emergency rulemaking for January 1, 2000 effectiveness is necessary.

The emergency rulemaking action is comprised of two provisions which do the following: (1) provide an examination waiver in new section DFI–Sec 5.01(4)(e) for any applicant licensed as an investment adviser or investment adviser representative in any jurisdiction in the U.S. on January 1, 2000; and (2) provide an examination waiver in amended section DFI–Sec 5.01(4)(b) for any applicant that has been licensed as an investment adviser or investment adviser representative in any jurisdiction in the U.S. within two years prior to the date the application is filed.

Publication Date: **December 28, 1999**
Effective Date: **January 1, 2000**
Expiration Date: **May 30, 2000**
Hearing Date: **March 13, 2000**

EMERGENCY RULES NOW IN EFFECT (2)

Gaming Division

1. Rules adopted creating **ch. Game 27**, relating to the conduct of pari–mutuel snowmobile racing.

Finding of Emergency

The Department of Administration's Division of Gaming finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

In January of 2000 a snowmobile promoter proposes to offer pari–mutuel wagering on snowmobile races conducted in Wisconsin. Section 562.124, Stats., allows for pari–mutuel snowmobile racing with the requirement that the Division of Gaming regulate the racing and promulgate all rules necessary to administer the statutory provision in the statutes.

Since this will be the first occasion within the United States that there will be pari–mutuel wagering on a motor sport or mechanical event, the Division of Gaming took extra time in preparing and reviewing the proposed rules with emphasis and attention directed toward the health, welfare and safety of the participants, workers and the public. Additionally, the Division of Gaming is incorporating standards by reference, specifically the Oval Sprint Racing Rules; Sno–Cross Racing Rules; and the General Competition Rules, excluding Enforcement, Discipline and Violation, of International Snowmobile Racing, Incorporated as identified in the *1999–2000 ISR Snowmobile Racing Yearbook.* These rules, which were made public in October of 1999 were reviewed extensively, once again with an emphasis on the health, welfare and safety of the prior noted individuals.

The conduct of pari–mutuel snowmobile racing will create additional jobs, increase tourism within the State of Wisconsin and generate revenues for the Division of Gaming.

Publication Date: **December 23, 1999**
Effective Date: **December 23, 1999**
Expiration Date: **May 21, 2000**

2. Rule adopted repealing **ch. Game 27,** relating to the conduct of pari–mutuel snowmobile racing, which was created by emergency rule on December 23, 1999.

Finding of Emergency

Based upon the public opposition to this emergency rule, the Department has reconsidered its creation of ch. Game 27 as an emergency rule. The Department will instead pursue creation of the proposed rule under the permanent rulemaking procedures.

Publication Date: **January 15, 2000**
Effective Date: **January 15, 2000**
Expiration Date: **May 21, 2000**

EMERGENCY RULES NOW IN EFFECT (2)

Health & Family Services
(Management, Technology, etc., Chs. HFS 1–)

1. A rule was adopted revising **chapter HFS 12 and Appendix A,** relating to caregiver background checks.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

Since October 1, 1998, the Department has been implementing ss. 48.685 and 50.065, Stats., effective on that date, that require use of uniform procedures to check the backgrounds of persons who apply to the Department for regulatory approval, to a county social services or human services department that licenses foster homes for children and carries out adoption home studies, to a private child–placing agency that does the same or to a school board that contracts for day care programs, to provide care or treatment to persons who need that care or treatment, or who apply to a regulated entity to be hired or contracted with to provide services to the entity's clients or who propose to reside as a non–client at the entity. The statutes direct the regulatory agencies and regulated entities to bar persons, temporarily or permanently, depending on the conviction or finding, who have in their backgrounds a specified conviction or finding substantially related to the care of clients, from operating a service provider organization, providing care or treatment to persons who need that care or treatment or from otherwise having contact with the clients of a service provider.

To implement the new Caregiver Law, the Department on October 1, 1998, published administrative rules, ch. HFS 12, Wis. Adm. Code, by emergency order. The October 1998 emergency rules were modified in December 1998 and February 1999 by emergency order, and were replaced by permanent rules effective July 1, 1999. On September 12, 1999, the Department issued another emergency order again modifying ch. HFS 12, but only the Crimes List and not the text of the chapter. The number of specified crimes was reduced to 79, with 6 of them, all taken from ss. 48.685 and 50.065, Stats., being crimes that permanently barred persons for all programs. The change to the ch. HFS 12 Crimes List was made at that time because the 1999–2001 Budget Bill, subsequently passed by the Legislature as 1999 Wisconsin Act 9, was expected to provide for a more modest list of crimes than the one that was appended to ch. HFS 12. The more modest crimes list published by an emergency rulemaking order on September 12, 1999 reflected the Legislature's intent that some persons who under the previous rules would lose their jobs effective October 1, 1999, were able to keep their jobs.

The 1999–2001 Biennial Budget Act, 1999 Wisconsin Act 9, made several changes to ss. 48.685 and 50.065, Stats., the Caregiver Law. These changes were effective on October 29, 1999. The Department's current rules, effective July 1, 1999, as amended on September 16, 1999, have been in large part made obsolete by those statutory changes. Consequently, the Department through this order is repealing and recreating ch. HFS 12 to bring its rules for operation of the Caregiver Law into conformity with the revised statutes. This

is being done as quickly as possible by emergency order to remove public confusion resulting from administrative rules, which have been widely relied upon by the public for understanding the operation of the Caregiver Law, that are now in conflict with current statutes.

The revised rules minimize repetition of ss. 48.685 and 50.065, Stats., and are designed to supplement those statutes by providing guidance on:

• Sanctions associated with the acts committed under the Caregiver Law;

• Determining whether an offense is substantially related to client care;

• Reporting responsibilities; and

• The conduct of rehabilitation review.

Publication Date: **February 12, 2000**
Effective Date: **February 13, 2000**
Expiration Date: **July 12, 2000**

2. Rules adopted creating **ch. HFS 10**, relating to family care.

Exemption From Finding of Emergency

The Legislature in s. 9123 (1) of 1999 Wis. Act 9 directed the Department to promulgate rules required under ss. 46.286 (4) to (7), 46.288 (1) to (3) and 50.02 (2) (d), Stats., as created by 1999 Wis. Act 9, but exempted the Department from the requirement under s. 227.24 (1) and (3), Stats., to make a finding of emergency.

Analysis Prepared by the Department of Health and Family Services

Legislation establishing a flexible Family Care benefit to help arrange or finance long–term care services to older people and adults with physical or developmental disabilities was enacted as part of 1999 Wis. Act 9. The benefit is an entitlement for those who meet established criteria. It may be accessed only through enrollment in Care Management Organizations (CMOs) that meet requirements specified in the legislation.

The Act also authorizes the Department of Health and Family Services to contract with Aging and Disability Resource Centers to provide broad information and assistance services, long–term care counseling, determinations of functional and financial eligibility for the Family Care benefit, assistance in enrolling in a Care Management Organization if the person chooses to do so, and eligibility determination for certain other benefits, including Medicaid, and other services.

Until July 1, 2001, the Department of Health and Family Services is authorized to contract with CMOs and Resource Centers in pilot counties to serve up to 29% of the state's eligible population. Further expansion is possible only with the explicit authorization of the Governor and the Legislature.

When Aging and Disability Resource Centers become available in a county, the legislation requires nursing homes, community–based residential facilities, adult family homes and residential care apartment complexes to provide certain information to prospective residents and to refer them to the Resource Center. Penalties are provided for non–compliance.

These proposed rules interpret this new legislation, the main body of which is in newly enacted ss. 46.2805 to 46.2895, Stats. The Department of Health and Family Services is specifically directed to promulgate rules by ss. 46.286 (4) to (7), 46.288 (1) to (3), 50.02 (2) (d) and 50.36 (2) (c), Stats. Non–statutory provisions in section 9123 of 1999 Wis. Act 9 require that the rules are to be promulgated using emergency rulemaking procedures and exempts the Department from the requirements under s. 227.24 (1) (a), (2) (b) and (3) of the Stats., to make a finding of emergency. These are the rules required under the provisions cited above, together with related rules intended to clarify and implement other provisions of the Family Care legislation that are within the scope of the Department's authority. The rules address the following:

• Contracting procedures and performance standards for Aging and Disability Resource Centers.

• Application procedures and eligibility and entitlement criteria for the Family Care benefit.

• Description of the Family Care benefit that provides a wide range of long–term care services.

• Certification and contracting procedures for Care Management Organizations.

• Certification and performance standards and operational requirements for CMOs.

• Protection of client rights, including notification and due process requirements, complaint, grievance, Department review, and fair hearing processes.

• Recovery of incorrectly and correctly paid benefits.

• Requirements of hospitals, long–term care facilities and Resource Centers related to referral and counseling about long–term care options.

Publication Date: **February 1, 2000**
Effective Date: **February 1, 2000**
Expiration Date: **June 30, 2000**

EMERGENCY RULES NOW IN EFFECT

Health & Family Services

(Community Services, Chs. HFS 30–)

Rules adopted revising **ch. HFS 50**, relating to adoption assistance programs.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

This rulemaking order amends ch. HFS 50, the Department's rules for facilitating the adoption of children with special needs, to implement changes to the adoption assistance program statute, s. 48.975, Stats., made by 1997 Wisconsin Act 308. Those changes include permitting a written agreement for adoption assistance to be made following an adoption, but only in "extenuating circumstances;" permitting the amendment of an adoption assistance agreement for up to one year to increase the amount of adoption assistance for maintenance when there is a "substantial change in circumstances;" and requiring the Department to annually review the circumstances of the child when the original agreement has been amended because of a substantial change in circumstances, with the object of amending the agreement again to either continue the increase or to decrease the amount of adoption assistance if the substantial change in circumstances no longer exists. The monthly adoption assistance payment cannot be less than the amount in the original agreement, unless agreed to by all parties.

The amended rules are being published by emergency order so that adoption assistance or the higher adoption assistance payments, to which adoptive parents are entitled because of "extenuating circumstances" or a "substantial change in circumstances" under the statutory changes that were effective on January 1, 1999, may be made available to them at this time, now that the rules have been developed, rather than 7 to 9 months later which is how long the promulgation process takes for permanent rules. Act 308 directs the Department to promulgate rules that, among other things, define

extenuating circumstances, a child with special needs and substantial change in circumstances.

Publication Date: November 16, 1999
Effective Date: November 16, 1999
Expiration Date: April 13, 2000
Hearing Dates: February 24, & 28, 2000

EMERGENCY RULES NOW IN EFFECT (2)

Health & Family Services
(Medical Assistance, Chs. HFS 101–108)

1. Rules were adopted revising **chs. HFS 101 to 103, and 108,** relating to operation of BadgerCare health insurance program.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that the rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

This order creates rules that specify how a new program called BadgerCare, established under s. 49.665, Stats., will work. Under BadgerCare, families with incomes up to 185% of the federal poverty level, but not low enough to be eligible for regular Medical Assistance (MA) coverage of their health care costs, and that lack access to group health insurance, are eligible to have BadgerCare pay for their health care costs. The order incorporates the rules for operation of BadgerCare into chs. HFS 101 to 103 and 108, four of the Department's chapters of rules for operation of the MA program.

BadgerCare is projected to cover over 40,000 currently uninsured Wisconsin residents, including more than 23,000 children, by the end of 1999.

Benefits under BadgerCare will be identical to the comprehensive package of benefits provided by Medical Assistance. The existing Wisconsin Medicaid HMO managed care system, including mechanisms for assuring the quality of services, improving health outcomes and settling grievances, will be used also for BadgerCare.

Department rules for the operation of BadgerCare must be in effect before BadgerCare may begin. The program statute, s. 49.665, Stats., was effective on October 14, 1997. It directed the Department to request a federal waiver of certain requirements of the federal Medicaid Program to permit the Department to implement BadgerCare not later than July 1, 1998, or the effective date of the waiver, whichever date was later. The federal waiver letter approving BadgerCare was received on January 22, 1999. It specified that BadgerCare was not to be implemented prior to July 1, 1999. Once the letter was received, the Department began developing the rules. They are now ready. The Department is publishing the rules by emergency order so that they will go into effect on July 1, 1999, rather than at least 9 months later, which is about how long the process of making permanent rules takes, and thereby provide already authorized health care coverage as quickly as possible to families currently not covered by health insurance and unable to pay for needed health care.

The rules created and amended by this order modify the current Medical Assistance rules to accommodate BadgerCare and in the process provide more specificity than s. 49.665, Stats., about the nonfinancial and financial conditions of eligibility for BadgerCare; state who is included in a BadgerCare group and whose income is taken into consideration when determining the eligibility of a BadgerCare group; expand on statutory conditions for continuing to be eligible for BadgerCare; exempt a BadgerCare group with monthly income at or below 150% of the federal poverty level from being obliged to contribute toward the cost of the health care coverage; and set forth how the Department, as an alternative to providing Medical Assistance coverage, will go about purchasing family coverage offered by the employer of a member of a family eligible for BadgerCare if the Department determines that purchasing that coverage would not cost more than providing Medical Assistance coverage.

Publication Date: July 1, 1999
Effective Date: July 1, 1999
Expiration Date: November 28, 1999
Hearing Dates: August 26, 27, 30 & 31, 1999
Extension Through: March 26, 2000

2. Rules adopted creating **ss. HFS 106.12 (9) and 108.02 (9)(f),** relating to discovery rights in contested case proceeding involving health care providers under the MA program.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that the adoption of the rules is necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

In Wisconsin, contested case proceedings for which state agencies must hold administrative hearings are by statute divided into three categories. Class 1 cases involve situations in which the agency has substantial discretionary authority (such as rate setting or the grant or denial of a license) but no imposition of a sanction or penalty is involved; Class 2 contested cases involve the imposition of a sanction or penalty; and Class 3 cases are those not included in Class 1 or Class 2. Under s. 227.45(7), Stats., in a Class 2 proceeding the parties have an automatic right to take and preserve evidence prior to the hearing by using discovery procedures such as depositions and interrogatories, but in a Class 1 or Class 3 proceeding the parties generally do not have the right to use discovery unless rules of the agency specifically provide for that right.

The Department of Health and Family Services does not have rules providing for discovery in a Class 1 or Class 3 contested case. Accordingly, discovery has not been available for Class 1 or Class 3 cases except with respect to certain witnesses identified in s. 227.45 (7), Stats. The Department of Administration's Division of Hearings and Appeals handles cases delegated from this Department. Recently, a hearing examiner in the Division of Hearings and Appeals issued an order in a Class 3 case which held that, because the Division of Hearings and Appeals has its own rules allowing discovery in all cases, those rules override the absence of any mention of discovery in the Department of Health and Family Services' rules concerning hearing rights and procedures.

This Department believes that an emergency exists. If other hearing examiners issue similar rulings, the Department of Health and Family Services would be subject to discovery in all cases. This means that in the absence of Department rules that provide otherwise, the process of litigation for Class 1 and Class 3 cases would be significantly prolonged for all parties and the additional administrative costs to the Department associated with that process (including the need to hire additional program staff, attorneys, and support staff to handle the depositions, interrogatories, and other discovery procedures) would be considerable.

There is a particularly high volume of Class 1 and Class 3 cases involving Medical Assistance program providers. Accordingly, these rules are issued to make clear that discovery remains unavailable in Class 1 and Class 3 Medical Assistance contested case proceedings involving providers.

Publication Date: December 23, 1999
Effective Date: December 23, 1999*
Expiration Date: May 21, 2000
Hearing Date: March 8, 2000

***On January 20, 2000, the Joint Committee for Review for Administrative Rules suspended these emergency rules under s. 227.19 (4) (d)1., Stats.**

EMERGENCY RULES NOW IN EFFECT

Higher Educational Aids Board

Rules adopted amending **s. HEA 11.03 (3)** and creating **s. HEA 11.03 (5),** relating to the Minority Teacher Loan Program.

Finding of Emergency

The 1989 Wis. Act 31 created s. 39.40, Stats., which provides for loans to minority students enrolled in programs of study leading to licensure as a teacher. The Wisconsin Higher Educational Aids Board (HEAB) administers this loan program under s. 39.40 and under ch. HEA 11. Current rules require that a student be enrolled full time and show financial need to be considered for participation in the Minority Teacher Loan Program. Students who did not enroll full time and did not show financial need were allowed to participate in the program in the past when part of the program was administered by another administrative body. These students are enrolled in teacher education programs that train teachers specifically for the school districts named in the statutes that outline the intent of the Minority Teacher Loan Program. Unless the Board changes its rules, many participating students will lose their eligibility in the program. This will cause a hardship to those students who relied on the interpretation of the prior system administration. Revising the rules would allow students who participated in the program in the past to continue to participate. The proposed revision will not affect expenditures of State funds for the Minority Teacher Loan Program.

Publication Date: **August 6, 1999**
Effective Date: **August 6, 1999**
Expiration Date: **January 3, 2000**
Hearing Date: **October 28, 1999**
Extension Through: **March 31, 2000**

EMERGENCY RULES NOW IN EFFECT

Natural Resources

(Environmental Protection – General, Chs. NR 100–)

Rules adopted creating **ch. NR 195**, relating to establishing river protection grants.

Finding of Emergency

The department of natural resources finds that an emergency exists and a rule is necessary for the immediate preservation of the public health, safety or welfare. The facts constituting the emergency are:

These grants are funded from a $300,000 annual appropriation that lapses into other programs at the end of each fiscal year. Due to delays in approving the biennial budget, there is not enough time remaining in the current fiscal year to develop a permanent rule, following standard procedures, to allow grants to be awarded with the current fiscal year appropriation. Potential river protection grant sponsors have been anticipating these grants and are ready to apply and make use of these funds. An emergency order will prevent the loss of $300,000 for protecting rivers that the legislature clearly intended to make available to these organizations. Initiating this much–anticipated program through emergency order, while permanent rules are being developed, is a positive step toward successful implementation.

Publication Date: **February 17, 2000**
Effective Date: **February 17, 2000**
Expiration Date: **July 16, 2000**
Hearing Dates: **March 16, 17, 21 & 22, 2000**

EMERGENCY RULES NOW IN EFFECT

Natural Resources

(Environmental Protection–Investigation and Remediation, Chs. NR 700–)

Rules adopted creating **ch. NR 746**, relating to sites contaminated with petroleum products from petroleum storage tanks.

Finding of Emergency

The Wisconsin Natural Resources Board finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts contributing to the emergency is:

The Department of Commerce has adopted administrative rules under ss. 101.143 and 101.144, Stats., to implement the Petroleum Environmental Cleanup Fund Act (PECFA). The purpose of PECFA is to reimburse responsible persons for the eligible costs incurred to investigate and remediate petroleum product discharges from a petroleum product storage system or home oil tank system. The recent emergency rule, ch. Comm 46, was adopted by both the Department of Natural Resources and the Department of Commerce in January 1999, incorporating parts of a Memorandum of Understanding between the two agencies that relates to the classification of contaminated sites and creating risk screening criteria for assessing petroleum–contaminated sites. However, ch. Comm 46 expired on September 27, 1999, prior to publication of the permanent rule. The emergency rule, ch. NR 746, is being proposed in order to ensure rules continue in effect during the time period between now and when the permanent rule is published. This action is also in response to a resolution adopted by the Joint Committee for Review of Administrative Rules (JCRAR), which directed the Department of Commerce and the Department of Natural Resources to promulgate a new emergency rule for this interim time period.

The emergency rule was approved and adopted by the State of Wisconsin Natural Resources Board on September 29, 1999.

Publication Date: **October 20, 1999**
Effective Date: **October 20, 1999**
Expiration Date: **March 18, 2000**
Hearing Date: **November 18, 1999**
Extension Through: **May 16, 2000**

EMERGENCY RULES NOW IN EFFECT (4)

Public Instruction

1. Rules adopted revising **ch. PI 35,** relating to the Milwaukee parental school choice program.

Finding of Emergency

The Department of Public Instruction finds that an emergency exists and that a rule is necessary for the immediate preservation of the public health, safety or welfare. A statement of the facts constituting the emergency is:

Emergency rules are necessary to clarify the eligibility criteria and requirements for parents and participating private schools in time for schools to properly establish procedures for the 2000–2001 school year. Furthermore, emergency rules are necessary to allow the private schools to begin planning summer school programs. The department is in the process of developing permanent rules, but such rules will not be in place prior to January 2000.

The requirements established under this rule have been discussed with the private schools and initial indications reflect an acceptance of these provisions.

Publication Date: **January 4, 2000**
Effective Date: **January 4, 2000**
Expiration Date: **June 2, 2000**
Hearing Date: **March 20, 2000**

2. Rules adopted creating **ch. PI 10,** relating to supplemental aid for school districts with a large area.

Finding of Emergency

The Department of Public Instruction finds that an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

1999 Wis. Act 9 appropriated $125,000 to be awarded by the department to eligible school districts in the 1999–2000 school year. Emergency rules are necessary to clarify the eligibility criteria and procedures for school districts to apply for funds under the program.

The rules contained in this order shall take effect upon publication as emergency rules pursuant to the authority granted by s. 227.24, Stats.

Publication Date: **January 28, 2000**
Effective Date: **January 28, 2000**
Expiration Date: **June 26, 2000**
Hearing Date: **March 15, 2000**

3. Rules adopted creating **ch. PI 24**, relating to state aid for achievement guarantee contracts and aid for debt service.

Finding of Emergency

The Department of Public Instruction finds that an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

State Aid for Achievement Guarantee Contracts:

The department will send SAGE contract information to school districts by mid–February and require proposed contracts to be submitted to the department by April 1, 2000. Emergency rules are necessary to clarify the eligibility criteria and requirements for school districts applying for state aid for achievement guarantee contracts in time for the 2000–2001 school year.

Partial Debt Service Reimbursement:

On or after October 29, 1999, a school board must adopt an initial resolution under s. 67.05 (6a), Stats., for issuance of bonds where the purpose for borrowing includes providing funds for classroom expansion necessary to fulfill a contract under s. 118.43, Stats. Emergency rules are necessary to clarify the criteria and procedures for SAGE school districts to receive partial debt service reimbursement for the 2000–2001 school year.

The proposed rules contained in this order shall take effect upon publication as emergency rules pursuant to the authority granted by s. 227.24, Stats.

Publication Date: **January 28, 2000**
Effective Date: **January 28, 2000**
Expiration Date: **June 26, 2000**
Hearing Date: **March 15, 2000**

4. Rules adopted creating **ch. PI 44,** relating to alternative education grants.

Finding of Emergency

The Department of Public Instruction finds that an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

1999 Wis. Act 9 appropriated $5,000,000 to be awarded by the department to eligible school districts or consortia of school districts in the 2000–2001 school year. Emergency rules are necessary to clarify the eligibility criteria and procedures for school districts or consortia of school districts to apply for funds under the program.

The rules contained in this order shall take effect upon publication as emergency rules pursuant to the authority granted by s. 227.24, Stats.

Publication Date: **January 28, 2000**
Effective Date: **January 28, 2000**
Expiration Date: **June 26, 2000**
Hearing Dates: **March 9, 14 & 15, 2000**

EMERGENCY RULES NOW IN EFFECT (2)

Revenue

1. Rule adopted creating **s. Tax 18.08 (4),** relating to assessment of agricultural land.

Finding of Emergency

The Wisconsin Department of Revenue finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is:

1995 Wisconsin Act 27 changed the way agricultural land is valued for property tax purposes. The law requires the Farmland Advisory Council to make recommendations regarding the transition from valuation under prior law to valuation under current law, and requires the department to promulgate rules to implement those recommendations.

On October 18, 1999, the Farmland Advisory Council recommended that agricultural land be assessed as of January 1, 2000 and thereafter according to value in agricultural use. Major Wisconsin farm organizations, among others, have petitioned the Department under s. 227.12, Stats., to promulgate an administrative rule implementing the Council's recommendation.

Since the Department holds assessor schools in November and typically publishes the next years use–value guidelines prior to January 1 of that year, an emergency rule requiring assessment of each parcel of agricultural land according to its value in agricultural use is necessary for the efficient and timely assessment of agricultural land as of January 1, 2000.

Publication Date: **November 30, 1999**
Effective Date: **November 30, 1999**
Expiration Date: **April 27, 2000**
Hearing Date: **January 7, 2000**

2. Rules were adopted revising **ch. WGC 61,** relating to the implementation and maintenance of the retailer performance program of the Wisconsin lottery.

Finding of Emergency

The Department of Revenue finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

Sections 565.02 (4)(g) and 565.10 (14)(b)3m., Stats., as created by 1999 Wis. Act 9, provide for the implementation of a retailer performance program, effective January 1, 2000. The program may be implemented only by the promulgation of rules.

This rule is therefore promulgated as an emergency rule and shall take effect upon publication in the official state newspaper. The retailer performance program is being implemented retroactively to January 1, 2000, pursuant to Section 9443 (1) of 1999 Wis. Act 9.

Publication Date: **March 3, 2000**
Effective Date: **March 3, 2000**
Expiration Date: **July, 31, 2000**

EMERGENCY RULES NOW IN EFFECT

Wisconsin Technical College System

Rules adopted creating **ch. TCS 16,** relating to grants for students.

Finding of Emergency

The Wisconsin Technical College System (WTCS) Board finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is:

1999 Wis. Act 9 (the 2000–2001 biennial budget bill) took effect on October 29, 1999. That act created ss. 20.292(1)(ep) and 38.305, Stats. An annual appropriation of $6,600,000 GPR in the second fiscal year of the 2000–2001 biennium was established. These funds are to be awarded by the WTCS Board as grants to students who are attending a Wisconsin technical college on a full–time basis and who are enrolled in a vocational diploma or associate degree program.

The Act requires the WTCS Board to promulgate rules to implement and administer the awarding of these grants. The Board has begun the permanent rule making process for establishing administrative rules for these student grants, but cannot complete the required public hearing and review of these rules prior the start of the upcoming school year, which begins on July 1, 2000. Moreover, prospective students evaluate their educational options, including costs, as early as February preceding their graduation from high school. Therefore, for the TOP Grant program to be implemented and the funds distributed to each technical college district, and in turn to each eligible student, in time for the upcoming school year, emergency administrative rules must be established immediately.

Publication Date: **February 1, 2000**
Effective Date: **February 1, 2000**
Expiration Date: **June 30, 2000**

EMERGENCY RULES NOW IN EFFECT

Transportation

Rules adopted revising **ch. Trans 4,** relating to requiring the use of a fully allocated cost methodology when evaluating bids solicited for transit service in a competitive process.

Exemption From Finding of Emergency

Chapter Trans 4 establishes the Department's administrative interpretation of s. 85.20, Stats. and prescribes administrative policies and procedures for implementing the state urban public transit operating assistance program authorized under s. 85.20, Stats. 1999 Wis. Act 9, section 9150(2bm), requires the Department to adopt an emergency rule to amend Chapter Trans 4 by adding a section that requires that cost proposals submitted by a publicly owned transit system in response to a request for proposals issued by a public body for the procurement of transit services to be funded under the state urban transit operating assistance program must include an analysis of fully allocated costs. The analysis must include all of the publicly owned system's costs, including operating subsidies and capital grants. This analysis shall be the basis for evaluating costs when ranking proposals.

Pursuant to 1999 Wis. Act 9, section 9150(2bm)(b), the Department is not required to provide evidence that the rule is necessary for the preservation of the public peace, health, safety or welfare, and is not required to provide a finding of emergency.

Publication Date: **December 12, 1999**
Effective Date: **December 12, 1999**
Expiration Date: **See 1999 Wis. Act 9, section 9150 (2bm)**
Hearing Date: **February 14, 2000**

EMERGENCY RULES NOW IN EFFECT

Workforce Development
(Prevailing Wage Rates, Ch. DWD 290–294)

A rule was adopted revising **s. DWD 290.155**, relating to the annual adjustment of thresholds for application of the prevailing wage rates for state or local public works projects.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

The Department of Workforce Development is acting under its statutory authority to annually adjust thresholds for the application of prevailing wage laws on state or local public works projects. The thresholds are adjusted in accordance with any change in construction costs since the last adjustment. The last adjustment was by emergency rule in January 1999 based on construction costs in December 1998. The Department uses the construction cost index in the December issue of the Engineering News–Record, a national construction trade publication, to determine the change in construction costs over the previous year. The current construction cost index indicates a 2.3% increase in construction costs over the previous year. This increase in construction costs results in an increase in the threshold for application of the prevailing wage laws from $33,000 to $34,000 for single–trade projects and from $164,000 to $168,000 for multi–trade projects.

If these new thresholds are not put into effect by emergency rule, the old thresholds will remain effective for approximately six months, until the conclusion of the permanent rule–making process. Between January 1, 2000, and July 1, 2000, a single–trade project with a minimum estimated project cost of more than $33,000 but less than $34,000 or a multi–trade project with an estimated cost of more than $164,000 but less than $168,000 would not be exempt from the prevailing wage laws, as they would be if the emergency rule were promulgated. The threshold adjustments for application of the prevailing wage laws are based on national construction cost statistics and are unlikely to be changed by the permanent rule–making process. The Department is proceeding with this emergency rule to avoid imposing an additional administrative burden on local governments and state agencies.

Publication Date: **December 29, 1999**
Effective Date: **January 1, 2000**
Expiration Date: **May 30, 2000**
Hearing Date: **February 28, 2000**

STATEMENTS OF SCOPE OF PROPOSED RULES

Arts Board

Subject:

Chs. AB 1 and 2 – Relating to the arts challenge initiative grants.

Description of policy issues:

Description of the objective of the rule:

The objective of the rule is to increase the equity of distribution of arts challenge initiative grants among arts organizations.

Description of existing policies relevant to the rule and of new policies proposed to be included in the rule, and an analysis of policy alternatives:

Current rules govern the process of selection of arts challenge grant recipients and the distribution of funding among recipients. The proposed rule will produce a more equitable distribution of the arts challenge initiative funding. The alternatives are to leave the current method of distribution of arts challenge initiative funding in place or to alter it to produce a more equitable distribution.

Statutory authority for the rule:

The statutory authority for the rule is ss. 44.53 (1) (e) and 44.565 (4), Stats.

Estimate of the amount of time state employees will spend to develop the rule and other resources necessary to develop the rule:

The Arts Board estimates that it will take approximately 30 hours of staff time on the rule which includes discussing the rule with the Board and interested members of Wisconsin's arts community.

Investment Board

Subject:

S. IB 2.04 – Relating to title holding companies.

Description of policy issues:

Objective of the rule:

The proposed rule would allow the Investment Board to use title holding companies for investments:

Policy analysis:

The Investment Board has recently modified its real estate investment program, after a thorough review of asset allocation policies for the Fixed Retirement Investment Trust of the Wisconsin Retirement System (WRS), to focus on direct investments in real property. It is anticipated that the revised program will result in a number of real estate purchases that will be 100 percent owned by the Investment Board. In order to protect the Investment Board and WRS assets from certain liabilities associated with ownership of real estate and other investments, the Investment Board proposes creation of s. IB 2.04 to provide for establishment and use of title holding companies.

Policy alternatives:

The Investment Board could purchase assets directly in its name without the use of title holding companies. However, this would potentially expose the Investment Board and funds under its management to massive tort and other liability claims that fall outside the bounds of its insurance coverage. It would also limit the Investment Board's flexibility in structuring investment transactions. Alternatively, the Investment Board could invest through limited partnerships. However, this would require participation and compensation of a separate general partner, which would likely preclude some potential investments and increase costs associated with others. While the Investment Board does contemplate purchase of some investments through limited partnerships, it is not a viable vehicle for all direct investments.

Statutory authority:

The Investment Board proposes to promulgate the rule under authority granted by s. 25.156 (1), Stats., to interpret investment authority contained in ss. 25.17 (3) (a) and (7), 25.18 (1) (e), (f) and (m) and (2), and 620.22, Stats.

Staff time required:

The Investment Board anticipates it will take approximately 20 hours of staff time to promulgate this rule. It believes that the rule will protect investment assets and enhance returns over the long run. Existing staff will be assigned to develop the rule.

Law Enforcement Standards Board

Subject:

S. LES 2.01 (1) (e) – Relating to an employment requirement of 60 college credits for law enforcement and tribal law enforcement officers.

Description of policy issues:

Description of objectives:

The objective of the intended rule–making is to amend rules to require law enforcement officers and tribal law enforcement officers to achieve at least 30 college credits within a total of 60 credits that are required for employment.

Policy analysis:

Current rules of the Board require that full–time and part–time law enforcement officers and tribal law enforcement officers achieve at least 60 college credits within 5 years of employment. The Board is authorized to waive up to 30 credits for life experiences that have enhanced writing, problem–solving and other communication skills.

Colleges and universities which officers attend may accept and apply transferred credits from other training or educational sources. A result is that an officer may reach the 60 credit standard (including credits waived by the Board) by attending far fewer classes than the Board intended when it established the 60 credit standard.

The Board proposes to establish a minimum requirement for directly achieved credits.

Statutory authority:

Section 165.85 (3) (b), Stats.

Estimates of the amount of state employee time and any other resources that will be necessary to develop the rule:

An Administrative Officer and a Program Assistant will require no more than 120 combined hours to develop and to promulgate the proposed rule.

Law Enforcement Standards Board

Subject:

S. LES 2.01 (1) (e) – Relating to amending rules to exempt part–time law enforcement or tribal law enforcement officers from compliance with the Law Enforcement Standards Board's 60 college credit employment requirement.

Description of policy issues:

Description of objectives:

The objective of the intended rule–making is to amend rules to exempt part–time law enforcement or tribal law enforcement officers from compliance with the Standards Board's 60 college credit employment requirement.

Policy analysis:

Current rules of the Board require that full–time and part–time law enforcement officers and tribal law enforcement officers achieve at least 60 college credits within 5 years of employment. Many employers of part–time officers believe the 60 college credit standard creates substantial difficulty for employment and retention of part–time officers, many of whom work full–time jobs in addition to their part–time law enforcement employment.

An alternative to be evaluated by the Standards Board would exempt part–time officers from the 60 college credit employment requirement unless they work more than 600 total hours during a year.

Statutory authority:

Section 165.85 (3) (b), Stats.

Estimates of the amount of state employee time and any other resources that will be necessary to develop the rule:

An Assistant Attorney General, an Administrative Officer and a Program Assistant will require no more than 160 combined hours to develop and to promulgate the proposed rule.

Natural Resources

Subject:

NR Code – Relating to policy on underground injection and primacy for Wisconsin's Underground Injection Control (UIC) program.

Description of policy issues:

Subject of the administrative code action/nature of Board action:

Authorize DNR staff to review current policy for the control of underground injection practices in the State of Wisconsin and, as needed, revise administrative rules and DNR/EPA primacy agreement.

Description of policy issues to be resolved, include groups likely to be impacted or interested in the issue:

New federal injection well regulations take effect on April 5, 2000. The DNR must update its primacy agreement with EPA if it is to retain primary enforcement authority for Wisconsin's Underground Injection Control (UIC) program. Failure to retain primacy would mean the loss of approximately $85,000 in federal funds that is annually provided to the DNR to administer this program. Loss of primacy would also subject many activities to direct federal regulation. Affected practices include the following: injection for in–situ remediation of soil and groundwater contamination, backfilling of mines, storm water infiltration systems, large–capacity septic systems, industrial wastewater drainfields, and aquifer storage recovery wells.

This rule/Board action represents a change from past policy.

Explain the facts that necessitate the proposed change:

The existing DNR/EPA UIC program primacy agreement is based on a belief that most injection practices are prohibited in Wisconsin; however, the recently revised federal definition of an "injection well" broadens the scope of the UIC program well beyond the Department's ability to reasonably demonstrate that most injection practices are prohibited. It is likely that a revision of policy is needed to specify which injection practices are prohibited and which injection practices are allowed but subject to regulation in a manner that is sufficient to meet federal regulatory requirements.

It is unsure if this rule/Board action represents an opportunity for pollution prevention and/or waste minimization. The DNR will consult with the Bureau's pollution prevention expert(s) and/or the Bureau of Cooperative Environmental Assistance.

Statutory authority:

Section 281.17 (8), Stats., and s. 1421, Federal Safe Drinking Water Act (42 U.S.C. s. 300h)

Anticipated time commitment:

The anticipated time commitment is 132 hours. Three public hearings are proposed to be held in October 2000 at Madison, Green Bay and Eau Claire.

Natural Resources (Fish, Game, etc., Chs. NR 1––)

Subject:

Ch. NR 25 – Relating to commercial fishing – outlying waters.

Description of policy issues:

Description of policy issues to be resolved, include groups likely to be impacted or interested in the issue:

To keep the incidental harvest of lake trout within acceptable limits, commercial gill netting for chubs is limited to prescribed areas.

A time–limited rule [Board Order No. FH–44–98] expanded areas open to chub fishing during the winter periods of 1999 and 2000. The Bureau of Fisheries Management and Habitat Protection is now considering recommending an extension, possibly modified, of this rule. If such a rule is recommended, it should take effect before January 15, 2001. In order to assure timely consideration and adoption of a rule in the event that the Bureau choses to recommend one, this RuleAgenda/Board Action Checklist is being submitted. This rule would affect commercial fishers directly.

This rule/Board action does not represent a change from past policy.

This rule/Board action does not represent an opportunity for pollution prevention and/or waste minimization. It is an adoption of federal requirements that do not include or allow for pollution prevention.

Statutory authority:

Sections 20.041, 29.014 (1), 29.519 (1) (b) and 227.11 (2) (a), Stats.

Anticipated time commitment:

The anticipated time commitment is 54 hours. Two public hearings will be held in July 2000 at Sturgeon Bay and Port Washington.

Natural Resources (Environmental Protection––Air Pollution Control, Chs. NR 400––)

Subject:

Chs. NR 400, 410, 419 to 425, 428, 439 and 485 – Relating to nitrogen oxide (NO_x) and volatile organic compound (VOC) emission reduction rules and plan components to address a comprehensive and federally–enforceable State Implementation Plan (SIP) to ensure one–hour ozone attainment in Wisconsin.

Description of policy issues:

Description of policy issues to be resolved, include groups likely to be impacted or interested in the issue:

By December 2000, Wisconsin is required to submit to EPA revisions to its state implementation plan (SIP) that will result in the attainment of the one–hour ambient air quality standard for ozone throughout Wisconsin. These plan revisions and their associated rules and programs represent the third and final phase of a series of attainment demonstration strategies developed to address the one–hour ozone problem in the Lake Michigan region. These air quality improvement strategies combine regional and local emission controls sufficient to demonstrate attainment of the ozone standard by 2007. At the present time, the designated non–attainment areas of Wisconsin for the one–hour ozone standard include the Milwaukee metropolitan counties of Kenosha, Milwaukee, Ozaukee, Racine, Washington and Waukesha plus Manitowoc County.

The Department previously adopted a series of VOC emission reduction measures which improved ozone air quality in the region and met intermediate control targets required by the 1977 and 1990 Clean Air Act amendments. Now in order to attain the one–hour ozone standard, significant reductions of NO_x emissions must be pursued regionally – in Wisconsin and in its upwind neighbor states. The Department must identify categories of large sources of NO_x for which emission control efforts would lead to a regional ozone air quality improvement in the ozone problem areas during the ozone episodes. The Department must establish an emissions control level for these source categories of interest. The Department is also pursuing a regional multi–state agreement for the control of large NO_x sources affecting the ozone problem areas and is working with Illinois and Indiana on a 3–state ozone attainment demonstration for the severest areas in SE Wisconsin, NE Illinois and NW Indiana.

Three source categories of VOC emissions missed during the earlier plans must also be controlled to a reasonably available control technology level (RACT). These include industrial clean–up solvent use, ink manufacturing and plastic parts coating operations. The most recent air quality modeling for the severe ozone areas indicate the need for some additional level of metropolitan and surrounding area VOC reductions beyond these specified non–CTG rules. Changes to the prior VOC RACT and mobile sector control measures may also need to be pursued to reach a modeled ozone attainment demonstration. If an interstate agreement leads to added VOC control commitments, such measures would be pursued concurrently with this NO_x –focused rule development effort.

Under the Plan to be submitted by December 2000, all significant NO_x and VOC emission sectors, including mobile, stationary, and area sources could become subject to added emission control requirements or to new product content or new equipment emission limits over the 2001 to 2007 time–frame. Stakeholder groups which the Department will involve in the development of NO_x and any added VOC control programs include electric utilities, pulp and paper companies, the Wisconsin Paper Council, Wisconsin Manufacturers and Commerce, the Department of Administration, the Department of Transportation as well as other state agencies. VOC control outreach would include a more focused stakeholder effort for eastern Wisconsin if additional controls beyond the current RACT stationary point source controls become a strategy focus. In addition, if a broadening of existing area sector VOC controls becomes a focus, statewide associations representing the manufacture and distribution of such products that might be affected by VOC content limits would be invited to participate in program evaluation and development.

If the revised SIP does not lead to monitored attainment of the standard by 2007, based on a complete plan and approved control programs, major sources of VOC emissions in the severe nonattainment areas are subject to a $5000/ton excess emissions fee under the federal Clean Air Act. This fee is collected by the state in which the excess emissions occur. Wisconsin must include an enforceable mechanism for collecting this fee within the state's December 2000 submittal.

This rule/Board action does represent a change from past policy.

Explain the facts that necessitate the proposed change:

The Department has previously adopted administrative rules to address the requirements of the Clean Air Act related to ozone nonattainment. The Department also worked with stakeholders in 1999 to respond to EPA's NO_x SIP call rule–making effort established to address the regional transport of ozone. The NO_x SIP call was directed at the largest electric utility and industrial source NO_x emitters. This rule package, however, represents an effort to achieve ozone control through the reduction of nitrogen oxide emissions from various source categories specifically to address the one–hour ozone problem areas in Wisconsin.

This rule/Board action represents an opportunity for pollution prevention and/or waste minimization.

Statutory authority:

Sections 110, 182, 185 – Federal Clean Air Act [42 USC 7410, 7511 (a), 7515] and section 285.11 (6), Wis. Stats.

Anticipated time commitment:

The anticipated time commitment is 6,114 hours. Three public hearings will be held in June 2000 at Milwaukee, Manitowoc and Kenosha.

Public Service Commission

Subject:

PSC Code – Relating to requirements for the use of renewable resource credits, which may be sold by electric providers that produce more renewable energy than the minimum percentages specified by s. 196.378 (2), Stats.

Description of policy issues:

Description of objective and policy issues:

1999 Wis. Act 9 created a renewable resources portfolio standard, requiring energy providers to meet certain minimum percentages of their retail energy sales with renewable resources. By December 31, 2001, at least 0.5 percent of the total energy each electric provider offers to its customers must be in the form of renewable energy. The minimum percentage figure gradually increases to 2.2 percent by the year 2011.

In lieu of providing renewable energy to its customers, an electric provider can purchase a renewable resource credit. Under s. 196.378 (3), Stats., an electric provider that produces excess renewable energy creates a credit, which can be sold to other providers. Under this statute, the Public Service Commission (Commission) must "promulgate rules that establish requirements for the use of a renewable resource credit, including calculating the amount of a renewable resource credit."

The scope of the Commission's proposed rule–making is focused on complying with this statutory provision. 1999 Wis. Act 9, section 9141 (2zt) (b) directs the Commission to submit its rules in proposed form to the Legislative Council no later than April 1, 2000.

Statutory authority:

Sections 196.378 and 227.11, Stats., and 1999 Wis. Act 9, section 9141 (2zt) (b).

Estimate of time and resources needed to develop the rules:

The Commission estimates that approximately 500 hours of employee time will be required to establish the renewable resources portfolio standard. No additional resources are likely to be needed in order to complete this project.

Revenue

Subject:

Chs. WGC 61, 62 and 63 – Relating to the Wisconsin Lottery and to the Retailer Performance Program of the Wisconsin Lottery.

Description of policy issues:

The objective of this proposed rule is to provide permanent rule authority for the Retailer Performance Program of the Wisconsin Lottery. Additionally, the proposal also provides for certain technical changes either as required by the Legislative Council Rules Clearinghouse ("Clearinghouse") or as necessary to correct or update existing rule text. These technical changes include proper notation of rules and citation of statutory authority within each rule, as well as spelling and grammatical corrections and updating of existing rules to remove outdated text.

Policy analysis:

Existing policies are set forth in the rules. The major portion of this proposal is for the newly–enacted authority regarding the Retailer Performance Program. The other changes are technical in nature and do not reflect changes in policy. If the rules are not changed, they will be incorrect in that they will not reflect current law, current Department policy or current requirements of the Clearinghouse.

Specifically, the changes necessary for the Retailer Performance Program are primarily focused around ss. WGC 61.02, 61.04, 61.08 and 61.085. These changes allow for the implementation of the program as provided for by 1999 Wis. Act 9. These changes are nearly identical with the companion emergency rule for the Retailer Performance Program.

Additionally, the technical changes are intended to update the current administrative rules. No new policies are being introduced. Specifically, chs. WGC 61, 62 and 63 require re–naming to chs. Tax 61, 62 and 63, respectively. Each rule in all three chapters requires a statutory citation to ensure consistency with Clearinghouse standards. Titles such as commission, commissioner and executive director require replacement with more appropriate titles and definitions, such as administrator in lieu of executive director.

Statutory authority:

Section 227.11 (2) (a), Stats., and ss. 565.02 (4) (g) and 565.10 (14) (b) 3m., Stats., as affected by 1999 Wis. Act 9.

Estimate of staff time required:

It is estimated that approximately 120 hours of staff time will be required to complete this proposed rule.

Transportation

Subject:

Ch. Trans 131 – Relating to governing operation of the Vehicle Emission Inspection Program.

Description of policy issues:

Description of the objective of the rule:

This rule–making will amend ch. Trans 131, governing operation of the Vehicle Emission Inspection Program. The Department of Transportation proposes to amend s. Trans 131.03 (2) (b), which requires a vehicle purchaser to obtain an emission test within 45 days after purchase, unless the vehicle had passed the emission test within 90 days before purchase.

Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives:

Existing policy is that the vehicle has to have been tested within 90 days before vehicle purchase. This provision was intended to assure that no more than 15 months would have passed between a vehicle's testing. However, the requirement dates from the time that tests were done annually. Currently, tests are done every two years, and the 90–day window is more restrictive than necessary. The Department of Transportation proposes making the window 180 days instead of 90 days.

Statutory authority for the rule:

Sections 110.06, 110.20 and 227.11 (2), Stats.

Estimates of the amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

20 hours.

Transportation

Subject:

Ch. Trans 233 – Relating to land divisions abutting state trunk highways and connecting streets.

Description of policy issues:

Description of the objective of the rule:

Chapter Trans 233, relating to land divisions abutting state trunk highways and connecting streets, was revised effective February 1, 1999. WISDOT has been working cooperatively with many affected interests and legislators to refine the implementation of the new provisions of ch. Trans 233 through a four step process, in brief:

1) Education, Training, Meetings.

2) Specific Responses to Questions.

3) Uniform Implementation.

4) Refine Rule As Necessary.

This proposed rule revision is intended to implement conceptual agreements by WISDOT for clarification or modification of the rule as part of this continuing cooperative process "for the safety of entrance and departure from the abutting [highways] and for the preservation of the public interest and investment in the [highways]."

Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives:

Chapter Trans 233 was established in 1956 and required amendments in 1999 for consistency with existing laws, new developments in land use and transportation planning principles, and for clarification and uniformity. The objective of this revision is to recognize state and local economic and land use goals in the rule, enhance the effectiveness of the rule "as may be deemed necessary and proper for the preservation of highways, or for the safety of the public, and to make the granting of any highway access permit conditional thereon," and to provide reasonable flexibility and clarity that does not jeopardize public investments or safety now or in the future.

Statutory authority for the rule:

Sections 236.12 (2) (a) and (3) and 236.13 (1) (e), Stats.

Sections 84.25, 84.29, 84.295, and 86.07, Stats.

Sections 1.11, 80.01 (3), 84.01 (29), and 84.106, Stats., as created by 1999 Wis. Act 9.

Estimates of the amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

Approximately 5 days for each member of an 8–member development team to continue meeting with the public and consider the proposed rule after it is drafted, and 6 days for initial and 2 days for final policy articulation and drafting by two persons. There will be coordination required with interest groups in order to obtain review and comment and establish appropriate public hearing(s) at convenient locations. Other reviews and approvals will be handled in the normal course of DOT business.

SUBMITTAL OF RULES TO LEGISLATIVE COUNCIL CLEARINGHOUSE

Notice of Submittal of Proposed Rules to Wisconsin Legislative Council Rules Clearinghouse

Please check the Bulletin of Proceedings for further information on a particular rule.

Administration

Rule Submittal Date

On February 18, 2000, the Wisconsin Department of Administration submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

Statutory authority: ss. 16.611, 16.612 and 227.11 (2) (a), Stats.

Statutes interpreted: ss. 16.61 and 16.612, Stats.

The proposed rule repeals and recreates ch. Adm 12,Wis. Adm. Code. The objective of the proposed rule is to ensure that the quality of public records in electronic format is maintained and that public records in electronic format remain accessible for their designated retention period.

The proposed rule provides guidelines and standards for agencies wishing to maintain their public records electronically. Public records can be created and maintained with a variety of technologies including paper as well as various electronic methods. Electronic records may include but are not limited to scanned, imaged or word processing documents; electronic forms; sound or visual recordings; database entries and web–enabled records as well as others.

The proposed rule defines terms used within and refers readers to the statutory definition of a public record found at s. 16.61 (2) (b). General provisions of the chapter are intended to ensure electronic records will be accessible through time and will comply with State record–keeping and confidentiality requirements. More specific provisions establish standards for information systems that are used to maintain agencies' public records where the electronic version is the exclusive agency record.

Agency Procedure for Promulgation

A public hearing is required. The date for the public hearing is Wednesday, March 15, 2000 at 9:00 a.m.

Contact Information

If you have any questions regarding this rule, please contact:

Amy Moran
Department of Administration
Telephone (608) 261–6616

Employe Trust Funds

Rule Submittal Date

Notice is hereby given that on February 25, 2000, the Department of Employe Trust Funds submitted to the Wisconsin Legislative Council Rules Clearinghouse a proposed order amending ss. ETF 50.30 (1m) and 50.50 (1) (c) 3 and creating ss. ETF 50.32 (4) and 50.42, Wis. Adm. Code.

Analysis

The subject matter of the proposed rule relates to determining whether a person is a participating employe as used in the eligibility criteria for a Wisconsin Retirement System disability or Long Term Disability Insurance (LTDI) benefit and clarifies the earned income test used to determine whether a terminated employe had intervening employment after the employe last worked for a covered WRS employer.

Agency Procedure for Promulgation

A public hearing is scheduled for 1:00 PM on Tuesday, April 4, 2000, 801 W. Badger Road, Madison, Wisconsin.

Contact Information

If you have any questions, you may contact:

Diane M. Bass
Disability Programs Bureau
Division of Insurance Services
Telephone (608) 266–8083

Financial Institutions--Banking

Rule Submittal Date

Pursuant to s. 227.14 (4m), notice is hereby provided of the Department of Financial Institutions' submittal to the Legislative Council of proposed rules creating ch. DFI—Bkg 4, relating to financial subsidiaries. The date on which the proposed rules were submitted to the Council for review was February 28, 2000.

Analysis

Statutory authority:

SS. 220.02 (2), 221.0322 (2) and 227.11 (2), Stats.

The proposed rule would allow state–chartered banks to control or hold an interest in financial subsidiaries that would engage in activities that are financial in nature or incidental to a financial activity. The objective of the rule is to ensure that state–chartered banks will not be at a competitive disadvantage to other financial institutions that have received similar authority under the Gramm–Leach–Bliley Act of 1999 ("Act").

National banks are permitted under the Act to control or hold an interest in financial subsidiaries to engage in certain activities that are financial in nature or incidental to a financial activity. These financial activities are broader than "the business of banking or incidental to the business of banking activities" currently permitted for subsidiaries of state–chartered banks under s. DFI–Bkg. 3.04. Furthermore, state–chartered banks are permitted by s. 221.0322 (1)., Stats., to undertake any activity, exercise any power, or offer any financially–related product or service in the state that any other provider of financial products or services may undertake, exercise or provide, or that the Division finds to be financially–related. Lastly, the proposed rule is consistent with section 121 (d) of the Act which permits insured state banks to control or hold an interest in a financial subsidiary, subject to safety and soundness firewalls.

The proposed rule would be the implementing provision under state law which may be necessary for state–chartered banks to exercise this new authority. Under the proposed rule, a financial institution may apply to the Division to control or hold an interest in a financial subsidiary to engage in financial activities. The financial institution must meet certain conditions and requirements, and additional provisions regarding capital deduction, disclosure, safeguarding policy and procedures, and affiliate requirements apply. The

Division shall examine and supervise each financial subsidiary. Prior to disposition of a financial subsidiary, the financial institution shall inform the Division.

Agency Procedure for Promulgation

A hearing on these rules is required. The organizational unit within the Department of FinancialInstitutions that is primarily responsible for the promulgation of ch. DFI—Bkg 4 is the Division of Banking.

Contact Information

The agency person to be contacted for substantive questions and responsible for agency's internal process:

Michael J. Mach, Administrator
Telephone (608) 266–0451
Dept. of Financial Institutions–Division of Banking
345 W. Washington, 4th Floor
Madison, WI 53703

Financial Institutions--Savings Banks

Rule Submittal Date

Pursuant to s. 227.14 (4m), notice is hereby provided of the Department of Financial Institutions' submittal to the Legislative Council of proposed rules creating ch. DFI––SB 19, relating to financial subsidiaries. The date on which the proposed rules were submitted to the council for review was February 28, 2000.

Analysis

Statutory authority: SS. 214.715 (1), 214.03 (1) and (2), and 227.11(2), Stats.

The proposed rule would allow state–chartered savings banks to control or hold an interest in financial subsidiaries that would engage in activities that are financial in nature or incidental to a financial activity. The objective of the rule is to ensure that state–chartered savings banks will not be at a competitive disadvantage to other financial institutions that have received similar authority under the Gramm–Leach–Bliley Act of 1999 ("Act").

National banks are permitted under the Act to control or hold an interest in financial subsidiaries to engage in certain activities that are financial in nature or incidental to a financial activity. These financial activities are broader than the parity provisions of s. 214.03 (1) and (2), Stats., and the subsidiary provisions of s. 214.49, Stats., and ch. DFI—SB 15. Lastly, the proposed rule is consistent with Section 121 (d) of the Act which permits insured state savings banks to control or hold an interest in a financial subsidiary subject to safety and soundness firewalls.

The proposed rule would be the implementing provision under state law which may be necessary for state–chartered savings banks to exercise this new authority. Under the proposed rule, a financial institution may apply to the Division to control or hold an interest in a financial subsidiary to engage in financial activities. The financial institution must meet certain conditions and requirements, and additional provisions regarding capital deduction, disclosure, safeguarding policy and procedures, and affiliate requirements apply. The Division shall examine and supervise each financial subsidiary. Prior to disposition of a financial subsidiary, the financial institution shall inform the Division.

Agency Procedure for Promulgation

A hearing on these rules is required. The organizational unit within the Department of Financial Institutions that is primarily responsible for the promulgation of ch. DFI—SB 19 is the Division of Savings Institutions.

Contact Information

The agency person to be contacted for substantive questions and responsible for agency's internal process:

John A. Gervasi, Administrator
Telephone (608) 261–2300
Dept. of Financial Institutions–Div. of Savings Institutions
345 W. Washington, 4th Floor
Madison, WI 53703

Financial Institutions--Savings and Loans

Rule Submittal Date

Pursuant to s. 227.14 (4m), notice is hereby provided of the Department of Financial Institutions' submittal to the Legislative Council of proposed rules creating ch. DFI—SL 21, relating to financial subsidiaries. The date on which the proposed rules were submitted to the council for review was February 28, 2000.

Analysis

Statutory authority:

SS. 215.03 (1), 215.135 (1) and (2), and 227.11 (2), Stats.

The proposed rule would allow state–chartered savings and loans to control or hold an interest in financial subsidiaries that would engage in activities that are financial in nature or incidental to a financial activity. The objective of the rule is to ensure that state–chartered savings and loans will not be at a competitive disadvantage to other financial institutions that have received similar authority under the Gramm–Leach–Bliley Act of 1999 ("Act").

National banks are permitted under the Act to control or hold an interest in financial subsidiaries to engage in certain activities that are financial in nature or incidental to a financial activity. These financial activities are broader than the additional authority provisions of s. 215.135 (1) and (2), Stats., and the subsidiary provisions of s. 215.13 (26), Stats., and ch. DFI—SL 15. Lastly, the proposed rule is consistent with Section 121 (d) of the Act which permits insured state savings and loans to control or hold an interest in a financial subsidiary subject to safety and soundness firewalls.

The proposed rule would be the implementing provision under state law which may be necessary for state–chartered savings and loans to exercise this new authority. Under the proposed rule, a financial institution may apply to the Division to control or hold an interest in a financial subsidiary to engage in financial activities. The financial institution must meet certain conditions and requirements, and additional provisions regarding capital deduction, disclosure, safeguarding policy and procedures, and affiliate requirements apply. The Division shall examine and supervise each financial subsidiary. Prior to disposition of a financial subsidiary, the financial institution shall inform the Division.

Agency Procedure for Promulgation

The organizational unit within the Department of Financial Institutions that is primarily responsible for the promulgation of ch. DFI—SL 21 is the Division of Savings Institutions.

Contact Information

The agency person to be contacted for substantive questions and responsible for agency's internal process:

John A. Gervasi, Administrator
Telephone (608) 261–2300
Dept. of Financial Institutions–Div. of Savings Institutions
345 W. Washington, 4th Floor
Madison, WI 53703

Veterans Affairs

Rule Submittal Date

On February 18, 2000 the Wisconsin Department of Veterans Affairs submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse amending s. VA 2.01 (2) (b) 15., Wis. Adm. Code, relating to the health care aid grant program, amending s. VA 12.02 (7) and creating s. VA 12.02 (16) Wis. Adm. Code, relating to the personal loan program, and creating ch. VA 15, Wis. Adm. Code, relating to grants to federally–recognized American Indian tribes and bands.

Analysis

In relation to the health care aid grant program, the proposed rule would raise the income eligibility limit for low income applicants on January 1 rather than on July 1 of each year. The increase in the eligibility limit would then coincide with cost of living adjustments for federal benefit programs and assure continued eligibility for low income veterans.

In relation to the personal loan program, the proposed rule would permit each spouse in a married couple, in which both spouses are veterans, the opportunity to receive a personal loan in the amount of $10,000, or an aggregate amount of $20,000. Under current rules, such a couple would be limited to an aggregate amount of $10,000 in personal loan program proceeds. It would recognize the service of each veteran under these circumstances.

In relation to tribal grant agreements, the proposed rule would identify the eligibility criteria for federally–recognized American Indian tribes and bands who seek to receive a service officer grant. The legislature created the program through the enactment of 1999 Wis. Act 9 and directed the Department to promulgate rules to implement the program.

Agency Procedure for Promulgation

A public hearing is required. The Division of Veterans Programs is primarily responsible for preparing the rule.

Contact Information

John Rosinski
Chief Legal Counsel
Telephone (608) 266–7916

Workforce Development

Rule Submittal Date

On March 1, 2000, the Department of Workforce Development submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory authority: ss. 103.66 and 104.04, Stats.

The proposed rule–making order affects chs. DWD 270 and 272, relating to student work–like activities that do not constitute employment.

Agency Procedure for Promulgation

A public hearing is required and will be held on Thursday, March 30, 2000. The organizational unit responsible for the promulgation of the proposed rule is the DWD Equal Rights Division.

Contact Information

Elaine Pridgen
Telephone: (608) 267–9403
Email: pridgel@dwd.state.wi.us

Notice of Hearings

Agriculture, Trade & Consumer Protection

[CR 00–39]

▶ **Reprinted from February 29, 2000** *Wis. Adm. Register.*

The state of Wisconsin, Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on proposed amendments to ch. ATCP 50, Wis. Adm. Code, relating to the soil and water resource management program. The hearings will be held at the times and places shown below. The public is invited to attend the hearings and comment on the proposed rule. Following the public hearings, the hearing record will remain open until **April 19, 2000** for additional written comments.

A copy of this rule may be obtained free of charge from the Wisconsin Department of Agriculture, Trade and Consumer Protection, Agricultural Resource Management Division, Bureau of Land and Water Resources, 2811 Agricultural Drive, P.O. Box 8911, Madison, WI 53708–8911, or by calling the bureau at 608/224–4620. Copies will also be available at the public hearings.

An interpreter for the hearing impaired can be made available upon request for these hearings. Please make reservations for a hearing interpreter by **March 3, 2000** by writing to the bureau at the address in the preceding paragraph, by calling 608/224–4620, or by contacting the message relay system (TTY) at 608/224–5058. Handicap access is available at the hearings.

Hearing Information

All hearings will begin with an informational session at **12:30 p.m.** The department will begin taking testimony at **2:00 p.m.** and will remain available at the sites until **5:30 p.m**. Please note the time and places to participate in the video conference. Ten hearings are scheduled as follows:

March 14, 2000 **Tuesday**	**South Central Wisconsin** **The Fitchburg Room** **Fitchburg Community Center** **5510 Lacy Road** **Fitchburg, Wisconsin 53711**
March 15, 2000 **Wednesday**	**Southeastern Wisconsin** **Michael Fields Agricultural Institute** **W2493 County Road ES** **East Troy, Wisconsin 53120**
March 16, 2000 **Thursday**	**The Pippen Conference Center** **Melvill Hall (formerly the Administration Building)** **U. W. Richland Center** **1200 Hwy 14 West** **Richland Center, Wisconsin 53581**
March 21, 2000 **Tuesday**	**West Central Wisconsin** **The Community Room** **Whitehall City Center** **18620 Hobson Street** **Whitehall, Wisconsin 54773**
March 22, 2000	**East Central Wisconsin**

Wednesday — **Room 025 (west entrance)**
Calumet County Courthouse
206 Court Street
Chilton, Wisconsin 53014

March 23, 2000 — **Central Wisconsin**
Thursday — **Hancock Ag Research Station**
N3909 County Hwy V
Hancock, Wisconsin 54943

March 28, 2000 — **North Central Wisconsin**
Tuesday — **Agricultural Center**
925 Donald Street
Medford, Wisconsin 54451

March 29, 2000 — **Northeastern Wisconsin**
Wednesday — **Clover Room, Multipurpose Bldg.**
Langlade County Fairgrounds
Neva Road, Hwy 45 North
Antigo, Wisconsin 54409

March 30, 2000 — **Northwestern Wisconsin**
Thursday — **Barron County Courthouse, Rm 110**
330 E. LaSalle Street
Barron, Wisconsin 54812

April 5, 2000 — **Video conference hearing**
Wednesday
from 7:30 p.m. to 9:30 p.m. at:

The Pyle Center, UW Madison
702 Langdon St., See Room Assignment
Madison Wisconsin 53706

Dept. of Natural Resources
Regional Headquarters
107 Sutliff Avenue
Rhinelander, Wisconsin 54501

UW Superior, Rothwell Student Ctr.
1600 Catlin Ave., Room 218
Superior, Wisconsin 54880

Written comments will be accepted until **April 19, 2000**.

Analysis Prepared by the Department of Agriculture, Trade and Consumer Protection

Statutory authority: ss. 92.05(3)(c) and (k), 92.14(8), 92.15(3)(b), 92.16, 92.18(1), 93.07(1), and 281.16(3)(b) and (c)

Statutes interpreted: s. 91.80, ch. 92, and s. 281.16

This rule repeals and recreates current rules related to Wisconsin's soil and water resource management program. The department of agriculture, trade and consumer protection ("DATCP") administers this program under ch. 92, Stats. Among other things, this rule:

- Requires farm conservation practices.
- Creates a farm nutrient management program.

- Updates standards for county soil and water conservation programs, including county land and water resource management plans.
- Updates standards and procedures for DATCP grants to counties.
- Updates standards and procedures for county cost–share grants to landowners.
- Establishes technical standards for cost–shared conservation practices.
- Transfers some nonpoint source pollution abatement grant programs from DNR to DATCP, as directed by the Legislature.

Background

General

DATCP administers Wisconsin's soil and water resource management program under ch. 92, Stats. The program is designed to conserve the state's soil and water resources, reduce soil erosion, prevent nonpoint source pollution and enhance water quality. This rule spells out program standards and procedures.

DATCP administers this program in cooperation with county land conservation committees, the state land and water conservation board ("LWCB"), the department of natural resources ("DNR"), the natural resource conservation service of the U.S. department of agriculture ("NRCS") and other agencies. DATCP coordinates soil and water management efforts by these agencies. DATCP funds county soil and water conservation programs, and finances county cost–share grants to landowners to implement conservation practices. DNR administers a related cost–share program aimed at preventing nonpoint source pollution.

In 1997 Wis. Act 27, the Legislature mandated a comprehensive redesign of state programs related to nonpoint source pollution. Among other things, the Legislature directed DATCP and DNR to establish conservation standards and practices for farms. The Legislature also directed DATCP to adopt rules related to nutrient management on farms. DATCP and DNR held informational hearings and obtained recommendations from an outreach advisory committee. This rule implements many of those recommendations. This rule also implements statutory changes contained in 1999 Wis. Act 9 (biennial budget act).

County Programs

DATCP administers soil and water conservation programs in cooperation with county land conservation committees. Counties adopt land and water resource management plans, administer county ordinances, adopt conservation compliance standards for farmers claiming farmland preservation tax credits, provide information and technical assistance, and make cost–share grants to landowners installing conservation practices.

DATCP awards soil and water grants to counties. Grants pay for county staff and support, and reimburse counties for cost–share grants to landowners. DATCP reviews county grant applications and awards grants according to an annual grant allocation plan reviewed by the LWCB. Counties must ensure that cost–shared practices are installed according to state standards, and must account for all grant funds received.

Soil and Water Conservation on Farms

Farm Conservation Practices

DNR is primarily responsible for adopting farm performance standards to prevent nonpoint source pollution. DATCP must prescribe conservation practices to implement the DNR standards. DATCP must also establish soil conservation and farm nutrient management requirements. For ease of reference, this rule establishes a unified set of farm conservation practices that addresses nonpoint source pollution, soil conservation and nutrient management. Counties will take the lead role in implementing conservation practices on farms, with financial assistance from DATCP.

Under this rule (with limited exceptions discussed below), every farm in this state must implement the following conservation practices:

- *Soil erosion.* A farmer must manage croplands and cropping practices so that soil erosion rates on cropped soils do not exceed a tolerable rate ("T"). For most soils, the tolerable rate ("T") is equivalent to 3 to 5 tons of soil loss per acre per year. Soil erosion on cropped fields in water quality management areas may not exceed ½ T. A farmer may implement this conservation practice in a variety of ways. Farmers in high priority watersheds (see map, Appendix A) must implement this practice by December 31, 2006. Other farmers must implement this practice by December 31, 2010.
- *Grass waterways in cropland areas.* A farmer must maintain grass cover in highly erodible intermittent waterways in cropland areas. Farmers in high priority watersheds (see map, Appendix A) must implement this practice by December 31, 2006. Other farmers must implement this practice by December 31, 2010.
- *Manure storage facilities.* A farmer must comply with standards in this rule if the farmer constructs, moves, enlarges, reconstructs or abandons a manure storage facility after the effective date of this rule.
- *Clean water diversion.* A farmer must divert clean water runoff from entering any feedlot or barnyard located in a water quality management area. Farmers in high priority watersheds (see map, Appendix A) must implement this practice by December 31, 2006. Other farmers must implement this practice by December 31, 2010.
- *Livestock operations.* A farmer must manage livestock operations so that none of the following occur (these practices are prohibited by current law):

  *Overflows from manure storage facilities.

  *Unconfined manure piles in water quality management areas.

  *Unrestricted livestock access to waters of the state that prevents themaintenance of sod cover adjacent to those waters.

  *Direct runoff from animal feeding operations, or from stored manure, to waters of the state.
- *Manure applications.* Beginning with the effective date of this rule, a farmer may not apply more than 75 lbs. of P_2O_5 per acre per year in the form of unincorporated manure or organic material. The following amounts of unincorporated manure are deemed to contain 75 lbs. of P_2O_5 unless a test shows that the manure contains a different concentration of P_2O_5:

Manure Type	Solid (tons)	Liquid (gallons)
Dairy	25	9,000

Beef	14	5,000
Swine	25	5,000
Poultry	5	2,000

• *Annual nutrient management plan.* A farmer applying manure or commercial fertilizer must have an annual nutrient management plan, and must follow that plan. Farmers in high priority watersheds (see map, Appendix A) must implement this practice by December 31, 2006. Other farmers must implement this practice by December 31, 2010.

• *Nutrient management plan; preparation.* A qualified nutrient management planner (see below) must prepare each nutrient management plan required under this rule. A farmer may prepare a nutrient management plan if the farmer is a qualified nutrient management planner. A person selling bulk fertilizer to a farmer, for application after December 31, 2006, must record the name and address of the nutrient management planner who prepared the farmer's nutrient management plan (if the farmer has a plan).

• *Nutrient management plan; contents.* A nutrient management plan must be based on soil tests, and must comply with standards under this rule. Nutrient applications may not exceed the amounts required to achieve applicable crop fertility levels recommended by the university of Wisconsin in UWEX publication A–2809, Soil Test Recommendations for Field, Vegetable and Fruit Crops (copyright 1998), unless the nutrient management planner documents a special agronomic need for the deviation. Appendix B contains a convenient summary of the UW recommendations for selected crops.

Exemptions

To comply with this rule, a farmer may need to discontinue or modify certain agricultural facilities or practices. However, this rule does not require a farmer to have a nutrient management plan, or to discontinue or modify that part of an agricultural facility or practice that was constructed or begun prior to the effective date of this rule, unless one of the following applies:

• The farmer can comply without incurring significant out–of–pocket or opportunity costs. Opportunity costs may include, for example, losses in net income that occur when land is taken out of agricultural production or crop value is impaired because of the change.

• A federal, state or local governmental unit offers the farmer cost–share funding to cover at least 70% of the farmer's cost to comply.

County Implementation

Counties will take the lead role in implementing farm conservation practices under this rule (see below). Counties must adopt land and water resource management plans to implement the conservation practices on farms. DATCP must approve county plans, as provided in ch. 92, Stats. Counties must update conservation standards for farmers claiming farmland preservation tax credits, and may adopt ordinances requiring other farmers to implement conservation practices. With DATCP financial help, counties may also provide cost–share grants, technical assistance and information to farmers.

Installing Conservation Practices; Technical Standards

A farmer may implement the conservation practices under this rule in a variety of different ways. DATCP, UW–extension, NRCS and the counties will provide information and recommendations.

If a landowner receives cost–share funding to install a conservation practice, the practice must comply with technical standards under this rule. The county must also determine that the funded practice is cost–effective. This rule specifies technical standards (including required maintenance periods) for the following cost–shared practices:

• Manure storage systems
• Manure storage system abandonment
• Barnyard runoff control systems
• Access roads and cattle crossings
• Animal trails and walkways
• Cattle mounds
• Conservation tillage
• Contour farming
• Critical area stabilization
• Cropland cover (green manure)
• Diversions
• Field windbreaks
• Filter strips
• Grade stabilization structures
• Heavy use area protection
• Intensive grazing management
• Livestock fencing

- Livestock watering facilities
- Milking center waste control systems
- Nutrient and pesticide management
- Relocating or abandoning animal feeding operations
- Riparian buffers
- Roofs
- Roof runoff systems
- Sediment basins
- Streambank and shoreline protection
- Strip–cropping
- Subsurface drains
- Terrace systems
- Underground outlets
- Waste transfer systems
- Water and sediment control basins
- Waterway systems
- Well decommissioning
- Wetland development or restoration

This rule does not change or eliminate any current technical standards, or add any new technical standards, except that it:

- Adds a standard for cropland cover (green manure).
- Adds a standard for riparian buffers (the new standard is similar to the existing standard for filter strips).
- Eliminates required maintenance periods for the following practices (a county may negotiate a maintenance period with the farmer, and may provide more cost–share funding in return for a longer maintenance period):

*Conservation tillage

*Contour farming

*Cropland cover (new standard)

*Intensive grazing management

*Nutrient or pesticide management

*Strip–cropping

This rule spells out a procedure by which DATCP may change technical standards in the future. DATCP will adopt future changes, if any, by rule (as it has in the past). The rulemaking process provides opportunity for public review and input. DATCP will make available complete copies of any technical standards that it incorporates by reference in a rule. DATCP will prepare a fiscal estimate and small business analysis on each proposed rule change, and may seek input from a DATCP advisory council.

DATCP will cooperate with the current Standards Oversight Council (SOC) in the development of technical standards. DATCP will consider SOC technical recommendations, but is not bound to adopt SOC recommendations as rules. SOC is a voluntary, multi–agency committee that works to share technical information and coordinate state and federal technical standards. SOC has no rulemaking authority. This rule does not change SOC's current role or operations. DATCP will encourage SOC to seek public input and cost information as SOC develops technical recommendations.

Cost–Share Funding for Conservation Practices

DATCP currently finances county cost–share grants to farmers who install soil and water conservation practices. DNR also provides cost–share funding under its nonpoint source pollution abatement program. This rule implements a legislative transfer of the rural nonpoint cost–share program from DNR to DATCP.

Under this rule, DATCP will finance county cost–share grants to farmers and rural landowners who install conservation practices – including practices designed to abate nonpoint source pollution. But DATCP will no longer finance cost–share grants to landowners who receive specific pollution discharge notices from DNR. Funding for that purpose is transferred to DNR. DNR will also continue to fund cost–share grants to urban landowners.

DATCP and DNR will jointly review county funding requests to determine the appropriate source of cost–share funding. Each county will determine its cost–share priorities based on the county land and water resource management plan. DATCP will allocate available cost–share dollars among the counties, based on state and county priorities.

DATCP will enter into an annual funding contract with each county receiving cost–share funds. The county, in turn, must enter into cost–share contracts with individual landowners. DATCP must be a party to a landowner cost–share contract if the contract is for more than $25,000. This rule spells out requirements for county cost–share contracts with landowners (see below).

DATCP reimburses cost–share payments after the county certifies that the cost–shared practice has been properly installed and paid for. Some conservation practices must be designed and certified by a professional engineer, a certified agricultural engineering practitioner or a qualified nutrient planner (see below).

Maximum Cost–Share Rates

A cost–share contract reimburses a portion of the landowner's cost to install the cost–shared practice. The county must implement cost–containment procedures (such as competitive bidding or other procedures described in this rule) to ensure that costs are reasonable.

A county may determine the cost–share rate that it will pay under a cost–share contract with a landowner. The maximum cost–share rate is 70%, except that the maximum cost–share rate is 80% if DATCP makes an "economic hardship" finding. DATCP may make an "economic hardship" finding if it finds that the landowner has a debt–to–asset ratio of more than 60% and net assets of less than $200,000, but will be able to pay the balance of the cost to install the cost–shared practice.

Under this rule, cost–share payments for the following cropping practices may not exceed the following amounts:

- For contour farming, $9 per acre.
- For cropland cover, $25 per acre.
- For strip–cropping, $13.50 per acre.
- For field strip–cropping, $7.50 per acre.
- For high residue management systems, other than no–till, ridge till or mulch till systems, $18.50 per acre.
- For no–till or ridge till systems, $15 per acre.
- For mulch till systems, $10 per acre.

This rule also limits cost–share grants in the following ways:

- No cost–share grant to relocate an animal feeding operation may exceed 70% of the estimated cost to install a manure management system or 70% of eligible relocation costs, whichever is less.
- Combined payments by all governmental units for a manure storage system may not exceed $35,000 ($45,000 if DATCP makes an "economic hardship" finding).

A cost–share grant under this rule may be combined with cost–share grants from other federal, state, local or private sources, provided that:

- The grants do not make duplicate payments for the same costs.
- Combined state–funded grants do not pay for more than 85% of project costs.

If a county cost–share grant to a landowner exceeds $25,000, DATCP must be a party to the cost–share contract (with the county and the landowner). DATCP must also record the contract with the county register of deeds.

This rule does not require a farmer to discontinue or modify that part of an agricultural facility or practice that was constructed or begun prior to the effective date of this rule unless the farmer's cost is insignificant or the farmer receives at least 70% cost–share funding (see above), up to the maximum cost–share amounts allowed under this rule.

Cost–Share Contracts with Landowners

A county land conservation committee must enter into a written contract with every landowner to whom the committee awards a cost–share grant financed by DATCP. The contract must include the following terms, among others:

- The location where the cost–shared practice will be installed, and a specific legal description if the cost–share grant exceeds $25,000.
- Design specifications for the cost–shared practice. Cost–shared practices must be designed and installed according to this rule.
- The estimated cost of the practice.
- The rate and maximum amount of the cost–share grant.
- A construction timetable.
- A required maintenance period. The maintenance requirement runs with the land, and is binding on subsequent owners, if the cost–share grant is for more than $25,000.
- A procedure for pre–approving material construction changes.
- A requirement that the landowner must properly install the cost–shared practice and make all payments for which the landowner is responsible before the county makes any cost–share payment to the landowner. The county may make partial payments for partial installations that have independent conservation benefits. Some cost–shared practices must be reviewed by a professional engineer, a certified agricultural engineering practitioner or a qualified nutrient management planner (see below).
- County remedies for breach of contract.

Nutrient Management Program

General

This rule creates a nutrient management program, as required by 1997 Wis. Act 27. The program is designed to reduce excessive nutrient applications and nutrient runoff that may pollute surface water and groundwater. This program includes the following elements:

• *Manure applications.* Beginning with the effective date of this rule, a farmer may not apply more than 75 lbs. of P_2O_5 per acre per year in the form of unincorporated manure or organic material (see above).

• *Annual nutrient management plan.* A farmer applying commercial fertilizer or manure must have an annual nutrient management plan (see above), and must follow that plan. Farmers in high priority watersheds (see map, Appendix A) must implement this practice by December 31, 2006. Other farmers must implement this practice by December 31, 2010.

• *Nutrient management plan; preparation and contents.* A qualified nutrient management planner (see below) must prepare each nutrient management plan. A farmer may prepare a plan if the farmer is a qualified nutrient management planner. The plan may not recommend applications that exceed crop fertility levels recommended by the university of Wisconsin, unless the planner documents that the deviation is justified by special agronomic needs (see above).

• *Cost−share grants for animal waste and nutrient management.* A county may award cost−share grants for animal waste and nutrient management practices installed by farmers. Cost−shared practices must comply with technical standards under this rule.

Soil Testing Laboratories

Soil tests required by this rule must be performed by the university of Wisconsin or another soil testing laboratory certified by DATCP. To be certified, a laboratory must show that it is qualified and equipped to perform accurate soil tests. If a certified laboratory recommends nutrient applications that exceed the application rates provided under this rule, the laboratory must make the following disclosure:

IMPORTANT NOTICE

Our recommended nutrient applications exceed the amounts required to achieve applicable crop fertility levels recommended by the University of Wisconsin. The amounts required to achieve the UW's recommended crop fertility levels are shown for comparison. Excessive nutrient applications may increase your costs, and may cause surface water and groundwater pollution. If you apply nutrients at the rates we recommend, you will not comply with state soil and water conservation standards. You may contact your county land conservation committee for more information.

A certified laboratory must keep, for at least 4 years, copies of all its soil tests and nutrient recommendations. DATCP may deny, suspend or revoke a laboratory certification for cause. The affected laboratory may request a formal hearing under chapter 227, Stats.

Nutrient Management Planners

A qualified nutrient management planner must prepare each nutrient management plan required under this rule. A farmer may prepare a nutrient management plan if the farmer is a qualified nutrient management planner. A qualified nutrient management planner must prepare plans according to this rule.

A qualified nutrient management planner must be knowledgeable and competent in all the following areas:

• Using soil tests.

• Calculating nutrient needs.

• Crediting manure and other nutrient sources.

• State and federal standards related to nutrient management.

• Preparing nutrient management plans according to this rule.

A nutrient management planner is presumed to be qualified if at least one of the following applies:

• The planner is recognized as a certified professional crop consultant by the national alliance of independent crop consultants.

• The planner is recognized as a certified crop advisor by the American society of agronomy, Wisconsin certified crop advisors board.

• The planner is registered as a crop scientist, crop specialist, soil scientist, soil specialist or professional agronomist in the American registry of certified professionals in agronomy, crops and soils.

• The planner successfully completes a training course presented or approved by DATCP.

• The planner holds equivalent credentials recognized by DATCP.

No person may misrepresent that he or she is a qualified nutrient management planner. A nutrient management planner must keep, for at least 4 years, a record of all nutrient management plans that he or she prepares under this rule.

DATCP may issue a written notice disqualifying a nutrient management planner if the planner fails to prepare nutrient management plans according to this rule, or lacks other qualifications required under this rule. A nutrient management planner who receives a disqualification notice may request a formal hearing under ch. 227, Stats.

County Soil and Water Conservation Programs

General

This rule establishes standards for county soil and water resource management programs. Under this rule, a county program must include all the following:

• A county land and water resource management plan, and a program to implement that plan.

• County conservation standards that implement state soil and water conservation requirements on farms.

• A program to apply for, receive, distribute and account for state soil and water resource management grants.

• A program for distributing cost−share grants to landowners. A county must ensure that cost−shared conservation practices are designed and installed according to this rule.

• A recordkeeping and reporting system. Among other things, a county must file an annual accomplishment report and an annual financial report.

Land and Water Resource Management Plans

Under s. 92.10, Stats., every county must prepare a land and water resource management plan. DATCP must approve the county plan, for up to 5 years, after consulting with the LWCB. Beginning on August 1, 2001, DATCP may not award soil and water conservation grants to a county that lacks an approved plan.

A county land and water resource management plan must, at a minimum, describe all the following in reasonable detail:

• Water quality and soil erosion conditions throughout the county.

• State and local regulations that are relevant to the county plan. The plan must disclose whether local regulations will require farm conservation practices that differ materially from the practices required under this rule.

• Water quality objectives for each water basin, priority watershed and priority lake. The county must consult with DNR when determining water quality objectives.

• Key water quality and soil erosion problem areas. The county must consult with DNR when determining key water quality problem areas.

• Conservation practices needed to address key water quality and soil erosion problems.

• A plan to identify priority farms in the county.

• Compliance procedures, including notice, enforcement and appeal procedures, that may apply if a farmer fails to comply with applicable requirements.

• The county's multi−year workplan to achieve compliance with water quality objectives and implement farm conservation practices. The plan must identify priorities and expected costs.

• How the county will monitor and measure its progress.

• How the county will provide information and education to farmers, including information related to conservation practices and cost−share funding.

• How the county will coordinate its program with other agencies.

When preparing a land and water resource management plan, a county must do all the following:

• Appoint and consult with a local advisory committee of interested persons.

• Assemble relevant data, including relevant data on land use, natural resources, water quality and soils.

• Consult with DNR.

• Assess resource conditions and identify problem areas.

• Establish and document priorities and objectives.

• Project available funding and resources.

• Establish and document a plan of action.

• Identify roles and responsibilities.

Before a county submits a land and water resource management plan for DATCP approval, the county must hold at least one public hearing on the plan. The county must also make a reasonable effort to notify farmers affected by county findings, and give them an opportunity to contest the findings.

DATCP may review a county's ongoing implementation of a DATCP−approved county plan. DATCP may consider information obtained in its review when it makes its annual grant allocations to counties.

County Ordinances

A county may require farm conservation practices by ordinance. DATCP must review, and may comment on, proposed ordinances that implement farm conservation requirements under this rule (see s. 92.05(3)(L), Stats.). DATCP will review agricultural shoreland management ordinances and other ordinances that regulate farm conservation practices. DATCP will assist DNR in reviewing general shoreland management ordinances adopted under s. 59.692, Stats., if those ordinances regulate farm conservation practices.

A county need not obtain DATCP approval to adopt an ordinance, except for an agricultural shoreland management ordinance (see s. 92.17, Stats.). This rule, like current rules, establishes specific standards for county and local ordinances related to manure storage and agricultural shoreland management (see below).

A county ordinance implementing this rule may not require a farmer to discontinue or modify that part of an agricultural facility or practice that was constructed or begun prior to the effective date of this rule unless the farmer's cost is insignificant, or the farmer receives at least 70% cost−share funding (see above).

Farmland Preservation; Conservation Standards

Farmers who claim farmland preservation tax credits must currently meet county farm conservation standards. This rule requires every county, by December 31, 2006, to incorporate in its standards the farm conservation practices required under this rule (see above). In a county that fails to comply, farmers may be disqualified from claiming tax credits. DATCP may also deny soil and water conservation funding to a noncomplying county.

This rule spells out the procedure by which a county must adopt conservation standards for farms receiving tax credits under the farmland preservation program. The county must hold a public hearing on the proposed standards. The county must also submit the proposed standards for LWCB approval, as required under s. 92.105, Stats..

A farmer must comply with the county conservation standards in order to claim farmland preservation tax credits. A county may ask a farmer to certify compliance on an annual or other periodic basis, and must inspect a farmer's compliance at least once every 6 years. The county must issue a notice of noncompliance if the county finds that a farmer is not complying with the standards. If the farmer fails to comply by a deadline specified in the notice, the farmer may no longer claim farmland preservation tax credits. The farmer may meet with the county land conservation committee to discuss or contest a notice.

A farmer who fails to meet farmland preservation conservation standards may continue to claim tax credits if the farmer complies with a farm conservation plan that will achieve full compliance within 3 years. A farm conservation plan is a written agreement between the farmer and county, in which the farmer agrees to install specified conservation practices by a specified date.

Annual Grant Application

By April 15 of each calendar year, a county must file its funding application with DATCP for the next calendar year. The county may request any of the following:

• *A basic annual staffing grant.* A staffing grant is used to finance county staff engaged in soil and water conservation programs (see below). A grant may include training and support for county staff. The county must match a portion of the staffing grant, as provided in this rule. The grant application must identify the activities that the staff will perform, the amount of staff time projected for those activities, and the amount of funding requested.

• *Cost–share funding for farm conservation practices.* The county must identify the amount of cost–share funding requested, and the purposes for which the county will use that funding. DATCP distributes cost–share funding on a reimbursement basis, after the county certifies that the cost–shared practices are properly installed and paid for.

Annual Reports

By April 15 of each year, a county must file with DATCP a year–end accomplishment report for the preceding calendar year. The report must describe the county's activities and accomplishments, including progress toward the objectives identified in the county land and water resource management plan (see above).

By April 15 of each year, a county must also file with DATCP a year–end financial report for the preceding calendar year. The county must account for all soil and water conservation funds provided by DATCP. The report must include the county's opening balance, receipts, expenditures and closing balance in each relevant funding category. The county's chief financial officer must sign the report.

Accounting and Recordkeeping

Every county land conservation committee, in consultation with the county's chief financial officer, must establish and maintain an accounting and recordkeeping system that fully and clearly accounts for all soil and water conservation funds. The records must document compliance with applicable rules and contracts.

DATCP Review

DATCP may review county activities under this rule, and may require the county to provide relevant records and information.

Training for County Staff

DATCP may provide training, distribute training funds to counties (see below), make training recommendations, and take other action to ensure adequate training of county staff. Under this rule, DATCP must appoint a training advisory committee to advise DATCP on county staff training activities. The committee must include representatives of all the following:

- DNR.
- NRCS.
- The university of Wisconsin–extension.
- The statewide association of land conservation committees.
- The statewide association of land conservation committee staff.

Grants to County and Local Government

DATCP awards soil and water conservation grants to counties. These grants finance county staff and support, as well as county cost–share grants to landowners. DATCP does not provide grants to local government, except that DATCP may award staffing grants to local governments engaged in DNR priority watershed projects. In certain limited cases, DATCP may authorize a county to distribute cost–share funds to local governments to finance conservation practices required by local ordinances.

DATCP may award grants (service contracts) to governmental or non–governmental entities for information, education, training and other services related to DATCP's administration of the soil and water conservation program. Under this rule, DATCP will no longer award cost–share grants directly to individual landowners.

Annual Grant Allocation Plan

This rule requires DATCP to allocate soil and water conservation grants according to an annual grant allocation plan. The DATCP secretary signs the allocation plan after consulting with the LWCB. The plan must specify, for the next calendar year, all the following:

- The total amount appropriated to DATCP for possible allocation under the plan, including the amounts derived from general purpose revenue (GPR), segregated revenue (SEG) and bond revenue sources.
- The total amount allocated under the plan, including the amounts allocated from GPR, SEG and bond revenue sources.
- The total amount allocated for basic annual staffing grants to counties, the total and subtotal amounts allocated to each county, and an explanation for any material difference in allocations between counties.
- The total amount allocated to counties for cost–share grants to landowners, the total and subtotal amounts allocated to each county, and an explanation for those allocations.
- The amounts allocated to non–county grant recipients, and an explanation for those allocations.

DATCP must prepare the annual grant allocation plan after reviewing county grant applications. DATCP will normally provide a draft plan to DNR, the LWCB and every county land conservation committee by August 1 of the year preceding the calendar year to which the plan applies.

DATCP must adopt an annual allocation plan by December 31 of the year preceding the calendar year to which the plan applies. The final draft plan may include changes recommended by the LWCB, as well as updated estimates of project costs. DATCP must provide copies of the plan to DNR, the LWCB and every county land conservation committee.

Revising the Allocation Plan

DATCP may make certain revisions to an annual grant allocation plan after it adopts that plan. The DATCP secretary must sign each plan revision. A revision may do any of the following:

- Extend funding for landowner cost−share contracts that were signed by November 1 of the preceding year, but not completed during that year. Counties must apply by January 15 for contract funding extensions.
- Increase the total grant to any county. DATCP must give all counties notice and an equal opportunity to compete for funding increases (other than funding extensions for existing cost−share contracts).
- Reduce a grant award to any county with the agreement of that county.
- Reallocate a county's annual grant between grant categories, to the extent authorized by law and with the agreement of the county.

Before DATCP revises an annual grant allocation plan, it must do all the following:

- Provide notice and a draft revision to DNR, the LWCB and every county land conservation committee. The notice must clearly identify and explain the proposed revision.
- Obtain LWCB recommendations on the proposed revision.

Grant Priorities

Under this rule, DATCP must consider all the following when preparing an annual grant allocation plan:

- *County staff and project continuity.* DATCP must give high priority to maintaining county staff and project continuity. DATCP must also consider priorities identified in the county grant application and in the county's approved land and water resource management plan.
- *Statewide priorities*. DATCP may give priority to county projects that address the following statewide priorities:
  *Farms discharging pollutants to waters that DNR has listed as "impaired waters" under 33 USC 1313(d)(1)(A).
  *Farms applying nutrients at more than twice the maximum rate specified under this rule.
  *Farms whose cropland erosion is more than twice T−value.
  *Farms discharging substantial pollution to waters of the state.
  *Farms claiming tax credits under the farmland preservation program.
- *Other factors.* DATCP may also consider the following factors, among others, when determining grant allocation priorities:
  *The strength of the county's plan and documentation.
  *A county's demonstrated commitment to adopt and implement the farm conservation practices required under this rule.
  *The likelihood that funded activities will address and resolve high priority problems identified in approved county land and water resource management plans.
  *The relative severity and priority of the water quality and soil erosion problems addressed.
  *The relative cost−effectiveness of funded activities in addressing and resolving high priority problems.
  *The extent to which funded activities are part of a systematic andcomprehensive approach to soil erosion and water quality problems.
  *The timeliness of county grant applications and annual reports.
  *The completeness of county grant applications and supporting data.
  *The county's demonstrated ability, cooperation and commitment, including its commitment of staff and financial resources.
  *The degree to which funded projects contribute to a coordinated soil and water resource management program and avoid duplication of effort.
  *The degree to which funded projects meet county needs and state requirements.
  *The degree to which county activities are consistent with the county's approved land and water resource management plan.

Basic Annual Staffing Grants to Counties

DATCP must award a basic annual staffing grant to each eligible county that makes a required commitment of county funds. DATCP may not use bond revenue funds for county staffing grants. DATCP must distribute a basic annual staffing grant according to an annual grant contract with the county.

A county must use a basic annual staffing grant in the year for which it is made. The county may use the grant for any of the following purposes specified in the grant contract:

- Salaries, fringe benefits and training for county staff engaged in soil and water resource management activities.
- Training for county land conservation committee members.

- Any of the following staff support costs identified in the grant application:

*Travel expenses, including mileage charges, vehicle leases, meals, lodging and other necessary costs.

*Personal computers, software, printers and related devices.

*Office supplies, including paper, copies, printing and postage.

*Office equipment and furnishings, including desks, chairs, calculators, drafting equipment and file cabinets.

*Field equipment.

*A proportionate share of costs for required financial and compliance audits.

*Information and education supplies and services.

*Other staff support costs approved by DATCP.

DATCP may award different staffing grant amounts to different counties, based on DATCP's assessment of funding needs and priorities. Subject to staffing costs and the availability of funds, DATCP will attempt to provide salary and fringe benefit funding for an average of 3 staff persons per eligible county, with full funding for the first staff person, 70% funding for the second staff person and 50% funding for any additional staff persons.

Subject to the availability of funds, DATCP must award at least the following amounts to the following eligible counties:

- $12,000 to a county that has a county conservationist operating according to an agreement with DATCP.
- $7,000 to a county that does not have a county conservationist operating under an agreement with DATCP.

DATCP must pay the full amount of a basic annual staffing grant by April 15 of the grant year, or within 30 days after DATCP and the county land conservation committee sign the grant contract, whichever is later. DATCP may pay a portion of the grant at a later date if funding for that portion is appropriated for distribution during the grant year, but is not yet available for distribution on the normal distribution date. The department must pay that remaining portion when the funding becomes available for distribution. All grant funds must be distributed according to an annual grant allocation plan (see above).

In the county's annual financial report to DATCP, the county must report any unspent grant funds remaining at the end of the grant year. DATCP must deduct the unspent amount from the next year's basic annual staffing grant to the county.

In order to receive a basic annual staffing grant, a county must do all the following:

- If the basic annual staffing grant provides salary and fringe benefit funding for more than one county staff person, the county must provide funding equal to at least 30% of the salary and fringe benefit cost for the second staff person and 50% of the salary and fringe benefit cost for each additional staff person funded by the grant (see s. 92.14(5g), Stats.).
- The county must maintain its annual soil and water resource management expenditures at or above the amounts that the county expended in each of the years 1985 and 1986 (see s. 92.14(7), Stats.).

A county may count, as part of its contribution, expenditures for any county staff engaged in soil or water resource management work, regardless of whether those staff work for the county land conservation committee. A county may not count capital improvement expenditures, or the expenditure of grant revenues received from any outside source.

A county land conservation committee must keep records related to basic annual staffing grants. The records must document that the county used grant funds according to this rule and the grant contract. The county must retain the records for at least 3 years.

Grants for Conservation Practices

DATCP may award grants to eligible counties to finance cost−share grants to landowners. DATCP must enter into an annual contract with each county receiving cost−share funds. DATCP will pay the county on a reimbursement basis, after the landowner installs the cost−shared practice and the county does all the following:

- Files with DATCP a copy of the county's cost−share contract with the landowner. The cost−share contract must comply with this rule (see above).
- Certifies the reimbursement amount due.
- Certifies, based on documentation filed in the county, that the cost−shared practice is properly designed, installed and paid for (see above).

Cost−share funds may be used to finance conservation practices identified in this rule (see above), except that bond revenues may not be used to finance any of the following practices:

- Conservation tillage.
- Contour farming.
- Cropland cover (green manure).
- Intensive grazing management.
- Nutrient or pesticide management.
- Strip−cropping.

DATCP may use cost−share funds to reimburse a county for technical services that the county provides in connection with a cost−shared practice. Reimbursement for county technical services may not exceed 15% of project cost. Bond revenues may not be used to pay for technical services provided by the county.

DATCP may not use cost−share grant funds to reimburse a county for costs incurred after December 31 of the calendar year for which the funds are allocated. Unspent funds remain with DATCP, for distribution under a future year's allocation plan. If a landowner signs a funded cost−share contract by November 1 of the initial grant year, but does not complete that contract in that grant year (e.g., because of bona fide

construction delays), DATCP may extend funding to the next year. DATCP will normally extend funding if the county requests the extension by January 15 of that next year. DATCP will not extend funding for more than one year.

A county land conservation committee must keep all the following records related to cost−share grant funds received from DATCP:

- Copies of all county cost−share contracts with landowners.
- Documentation to support each county reimbursement request to DATCP (see above).
- Documentation showing all county receipts and disbursements of grant funds.
- Other records needed to document county compliance with this rule and the grant contract.

A county land conservation committee must retain cost−share records for at least 3 years after the committee makes its last cost−share payment to the landowner, or for the duration of the required maintenance period, whichever is longer. The committee must make the records available to DATCP and grant auditors upon request.

Priority Watershed Program; County and Local Staffing Grants

As part of the legislative restructuring of the state's nonpoint source pollution abatement program, DNR is phasing out its priority watershed program under ch. NR 120. DNR will continue to provide cost−share funding for priority watershed projects established prior to July 1, 1998. But DNR will establish no new priority watershed projects, and has established no new projects since July 1, 1998. DNR will no longer provide funding for county and local government staff engaged in the priority watershed program.

DATCP currently provides grants to pay for county soil and water conservation staff (see above). Under the redesigned nonpoint source pollution abatement program, DATCP will also fund county and local staff who are still engaged in DNR's priority watershed program. Funding for these county staff will be added to, and included in, DATCP's basic annual staffing grants to counties. DATCP will provide separate grants to other governmental units engaged in priority watershed projects.

This rule spells out standards for priority watershed staffing grants. Staffing grants include support costs. A county is not required to provide matching funds for priority watershed staffing grants, as it is for other staffing grants. Within the limits of available funds transferred from DNR, DATCP will try to ensure continuity of staffing and support for continuing priority watershed projects. Staffing grants for priority watershed projects will be phased out as remaining projects are completed.

Agricultural Engineering Practitioners; Certification

Under s. 92.18, Stats., DATCP must certify persons who design, review or approve cost−shared agricultural engineering practices. This rule identifies the agricultural engineering practices for which certification is required. This rule continues, without change, the certification program established under current rules. No certification is required for a professional engineer certified under ch. 443, Stats.

Applying for Certification

Under this rule, a person who wishes to be certified as an agricultural engineering practitioner must apply to DATCP or a county land conservation committee. A person may apply orally or in writing. DATCP or the committee must promptly refer the application to a DATCP field engineer. Within 30 days, the DATCP field engineer must rate the applicant and issue a decision granting or denying the application.

Certification Rating

The DATCP field engineer must rate an applicant using the rating form shown in *Appendix E* to this rule. The field engineer must rate the applicant based on the applicant's demonstrated knowledge, training, experience, and record of appropriately seeking assistance. For the purpose of rating an applicant, a field engineer may conduct interviews, perform inspections, and require answers and documentation from the applicant.

For each type of agricultural engineering practice, the rating form identifies 5 job classes requiring progressively more complex planning, design and construction. Under this rule, the field engineer must identify the most complex of the 5 job classes for which the applicant is authorized to certify that the practice is properly designed and installed. A certified practitioner may not certify any agricultural engineering practice in a job class more complex than that for which the practitioner is certified.

Appealing a Certification Decision

A field engineer must issue a certification decision in writing, and must include a complete rating form. An applicant may appeal a certification decision or rating by filing a written appeal with the field engineer. The field engineer must meet with the appellant in person or by telephone to discuss the matters at issue.

If the appeal is not resolved, DATCP must schedule an informal hearing before a qualified DATCP employee other than the field engineer. After the informal hearing, the presiding officer must issue a written decision that affirms, modifies or reverses the field engineer's action. If the applicant disputes the presiding officer's decision, the applicant may request a formal hearing under ch. 227, Stats.

Reviewing Certification Ratings

Under this rule, a DATCP field engineer must review the certification rating of every agricultural engineering practitioner at least once every 3 years. A field engineer must also review a certification rating at the request of the person certified. A field engineer may not reduce a rating without good cause, and all reductions must be in writing.

Suspending or Revoking Certification

Under this rule, DATCP may suspend or revoke a certification for cause. DATCP may summarily suspend a certification, without prior notice or hearing, if DATCP makes a written finding that the summary suspension is necessary to prevent an imminent threat to the public health, safety or welfare. The practitioner may request a formal hearing under ch. 227, Stats.

County and Local Ordinances

General

Farm conservation requirements adopted by a county, city, village, town or local governmental unit must be reasonably consistent with this rule. DATCP must review, and may comment on, proposed ordinances requiring farm conservation practices. DATCP will review agricultural shoreland management ordinances and other ordinances that regulate farm conservation practices. DATCP will assist DNR in reviewing general shoreland management ordinances adopted under s. 59.692, if those ordinances regulate farm conservation practices.

Counties and local entities must submit relevant ordinances for review. They need not obtain DATCP approval of their proposed ordinances, except that DATCP must approve agricultural shoreland management ordinances (see s. 92.17, Stats.). This rule, like current rules, establishes specific standards for county and local ordinances related to manure storage and agricultural shoreland management (see below).

Manure Storage Ordinances

A county, city, village or town may enact a manure storage ordinance under s. 92.16, Stats. Current rules spell out standards for manure storage ordinances. This rule incorporates those standards without change.

Under this rule, a county or local manure storage ordinance adopted under s. 92.16, Stats., must require persons constructing manure storage systems to obtain a county or local permit. A person constructing a manure storage system must have a nutrient management plan that complies with this rule, and must comply with applicable design and construction standards.

A manure storage ordinance may prohibit any person from abandoning a manure storage system unless that person submits an abandonment plan and obtains an abandonment permit. The rule spells out suggested abandonment requirements for those ordinances that regulate abandonment.

Agricultural Shoreland Management Ordinances

A county, city, village or town may enact an agricultural shoreland management ordinance under s. 92.17, Stats., with DATCP approval. Current rules spell out standards for agricultural shoreland management ordinances. This rule adopts the current rules without change. DATCP must seek DNR and LWCB recommendations before it approves an ordinance or amendment, except that DATCP may summarily approve an ordinance amendment that presents no significant legal or policy issues.

Local Regulation of Livestock Operations

A local governmental unit may regulate livestock operations under s. 92.15, Stats. Local regulations must be consistent with this rule. A local regulation may not require a farmer to change or discontinue that part of a facility or practice that existed prior to the effective date of this rule unless the farmer's cost is insignificant or the farmer receives at least 70% cost–share funding.

Waivers

DATCP may grant a waiver from any standard or requirement under this rule if DATCP finds that the waiver is necessary to achieve the objectives of this rule. The DATCP secretary must sign the waiver. DATCP may not waive a statutory requirement.

Standards Incorporated by Reference

Pursuant to s. 227.21, Stats., DATCP has received permission from the attorney general and the revisor of statutes to incorporate by reference in this rule NRCS technical guide standards, ASAE engineering practice standards, DNR construction site erosion control standards, the UW– extension pollution control guide for milking center waste water management, and the UW–extension guide on rotational grazing. Copies of these standards are on file with the department, the secretary of state and the revisor of statutes, but are not reproduced in this rule.

NRCS technical guide nutrient management standard 590 is attached as *Appendix D* to this rule. *Appendix B* contains a summary of UWEX publication A–2809, *Soil Test Recommendations for Field, Vegetable and Fruit Crops (copyright 1998)*, for selected crops. The department is seeking permission from the attorney general and revisor of statutes to incorporate the complete UWEX publication by reference in this rule. The complete publication and the summary are available from UW–extension, and will be on file with the department, the secretary of state and the revisor of statutes.

Fiscal Estimate

See page 37 of the February 29, 2000 *Wis. Adm. Register*.

Initial Regulatory Flexibility Analysis

See page 38 of the February 29, 2000 *Wis. Adm. Register*.

Draft Environmental Assessment

The department has prepared a draft environmental assessment for this proposed rule. Copies are available from the department upon request and will be available at the public hearings. Copies of the environmental assessment can from: Wisconsin Department of Agriculture, Trade and Consumer Protection, Agricultural Resource Management Division, Bureau of Land and Water Resources, 2811 Agricultural Drive, P.O. Box 8911, Madison, WI 53708–8911; telephone 608/224–4620. The department will accept comments on the draft environmental assessment at the public hearings and will accept written comments on the environmental assessment until April 14, 2000.

Notice of Hearing

Barbering & Cosmetology Examining Board

[CR 00–19]

Notice is hereby given that pursuant to authority vested in the Barbering and Cosmetology Examining Board in ss. 15.08 (5) (b) and 227.11 (2), Stats., and interpreting s. 440.62 (5) (b), Stats., the Barbering and Cosmetology Examining Board will hold a public hearing at the time and place indicated below to consider an order to amend Figure 5.02, Figure 5.04, Figure 5.05 and Figure 5.06, relating to theory hours conducted by the school outside of the classroom.

Hearing Information

April 3, 2000	**1400 E. Washington Ave.**
Monday	**Room 179A**
10:15 A.M.	**Madison, Wisconsin**

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by **April 17, 2000** to be included in the record of rule–making proceedings.

Analysis prepared by the Department of Regulation and Licensing

Statutes authorizing promulgation: ss. 15.08 (5) (b) and 227.11 (2)

Statute interpreted: s. 440.62 (5) (b)

The Barbering and Cosmetology Examining Board proposes to revise its rules to allow students to receive credit for one or more structured establishment visits. The current rules do not allow this to occur. Under current rules, students may not receive credit for attending structured classes outside of their school in licensed establishments.

The board believes that this rule would allow students to obtain valuable experience for how to deal with treating the consumer appropriately and to learn how a practitioner protects the health, safety and welfare of the citizenry.

Fiscal Estimate

This rule changes the practitioner license syllabus for Barbering and Cosmetology. The fiscal impact to implement this rule may include special board meetings and administrative costs. These costs are estimated to be about $300 annually and can be absorbed within the agency's budget.

Initial Regulatory Flexibility Analysis

These proposed rules will be reviewed by the department through its Small Business Review Advisory Committee to determine whether there will be an economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

Copies of Rule and Contact Person

Copies of this proposed rule are available without cost upon request to: Pamela Haack, Department of Regulation and Licensing, Office of Administrative Rules, 1400 East Washington Avenue, Room 171, P.O. Box 8935, Madison, Wisconsin 53708 (608) 266–0495

Notice of Hearing

Commerce

(PECFA, Chs. Comm 46–47)

Notice is hereby given that pursuant to ss. 227.11 (2) (a) and 227.24 (4), Stats., interpreting ss. 101.143 and 101.144, Stats., the Department of Commerce announces that it will hold a public hearing on an emergency rule in Ch. Comm 47, relating to the Petroleum Environmental Cleanup Fund.

Hearing Information

March 27, 2000
Monday
Commencing at 9:30 a.m.

Third Floor
Conference Room 3B
Tommy G. Thompson Commerce Center
201 W. Washington Ave.
Madison, Wisconsin

Interested persons are invited to appear at the hearing and present comments on the rule. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until **April 10, 2000**, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing.

This hearing will be held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 261–6546 or TTY at (608) 264–8777 at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon request by a person with a disability.

A copy of the emergency rule may be obtained without cost from Diane Ploessl, Department of Commerce, Bureau of PECFA, P.O. Box 7838, Madison, Wisconsin 53707, telephone (608) 261–7726, or (608) 264–8777 (TTY). Copies will also be available at the public hearing.

Fiscal Estimate

The Department is promulgating the emergency rule to temporarily expand a filing period from 30 days to 90 days, to provide PECFA claimants additional time to consider whether a funding decision from the Department should be appealed. There are no fiscal impacts to this rule change.

Notice of Hearing

Employe Trust Funds
[CR 00–43]

Notice is hereby given that pursuant to s. 40.03 (1), (6), (7) and (8), Stats., and interpreting s. 40.03 (6) and 40.63, Stats., the Department of Employe Trust Funds will hold a public hearing at the time and place indicated below to consider the amendment of ss. ETF 50.30 (1m) and 50.50 (1) (c) 3., and creation of ss. ETF 50.32 (4) and 50.42 (8m), Wis. Adm. Code, relating to eligible disability applicants.

Hearing Information

April 4, 2000
Tuesday
1:00 p.m.

Room 2A, ETF
801 West Badger Rd.
MADISON, WI

Written Comments

The public record on this proposed rule–making will be held open until **4:30 PM on Thursday, April 6, 2000** to permit the submission of written comments from persons unable to attend the public hearing in person, or who wish to supplement testimony offered at the hearing. Any such written comments should be addressed to Diane M. Bass, Disability Programs Bureau, Division of Insurance Services, Department of Employe Trust Funds, 801 W. Badger Road, P.O. Box 7931, Madison, Wisconsin 53707–7931.

Analysis Prepared by the Wis. Dept. of Employe Trust Funds

Under s. 40.63, Stats., to be eligible for a disability benefit from the Wisconsin Retirement System (WRS), an employe, prior to reaching their normal retirement age, must be totally disabled by a mental or physical impairment which is likely to be permanent and meet the requirements listed below:

- The employe must be a participating WRS employe.
- The employe must have a total of at least five years of creditable service or at least one–half year of creditable service in each of five of the years. The seven full calendar years before the received date of the disability application will be used to determine whether the service requirement is met.
- The employe must not be entitled to any further earnings from the employer.
- The employer must certify that the employe ceased employment due to a disability.
- The employe must be totally and permanently disabled as certified by two licensed physicians.

Pursuant to s. 40.63 (2), Stats., a participant shall be considered a participating employe only if no other employment which is substantial gainful activity has intervened since service for the participating employer terminated and if the termination of active service for the participating employer was due to disability. Section 40.63 (11), Stats., defines “substantial gainful activity” as employment for which the annual

compensation exceeds a specified dollar amount for a specific period of time. The current rule, s. ETF 50.30 (1m) for disability benefits under s. 40.63, Stats., relies on a monthly test to determine if the employe was gainfully employed since employment terminated with the WRS–covered employer. The amended rule will clarify that the Department will rely on a twelve consecutive month period of time rather than the monthly test to determine whether the employe was gainfully employed.

The Long Term Disability Insurance (LTDI) program provides an alternative to s. 40.63, Stats., disability benefits. Many of the provisions under s. ETF 50.40, Wis. Adm. Code, are very similar to the eligibility provisions for disability benefits under s. 40.63, Stats. The current rule, s. ETF 50.50 (1) (c) 3. for disability benefits under the LTDI program, also relies on a monthly test to determine gainful employment. The rule will be amended to clarify that the Department will rely on a twelve consecutive month period of time rather than the monthly test to determine whether the employe was gainfully employed.

The rule applies to the disability applicant who applies for either a disability benefit under s. 40.63, Stats., or LTDI benefit under s. ETF 50.40, Wis. Adm. Code. The LTDI program will eventually replace the WRS disability program under s. 40.63, Stats.

Under the provisions of s. 40.63, Stats., and LTDI s. ETF 50.40, Wis. Adm. Code, to be eligible to apply for either of these benefits, the applicant must be totally disabled by a mental or physical impairment which is likely to be permanent. In addition to meeting the service requirement, the medical definition, and the employer certifying that the applicant ceased employment due to a disability, the applicant must be a participating WRS employe. An employe who has terminated employment with the WRS–covered employer shall be considered a participating employe only if no other employment which is substantial gainful activity has intervened since service for the participating employer terminated.

The proposed rules define the "termination of employment" for purpose of determining whether a person is a participating employe as used in the eligibility criteria for WRS disability and LTDI benefits. The rules clarify the earned income test used to determine whether a terminated employe had intervening employment since the employe last worked for a covered Wisconsin Retirement System (WRS) employer. With the amended rule the Department will rely on an entire twelve consecutive month period of time rather than the monthly test to determine whether the employe was gainfully employed. This amendment to the current rule is intended to not only look at the "level of earnings" as required under substantial gainful activity, but to also look at the disability applicant's ability to sustain the level of earnings.

Text of Rule

SECTION 1. ETF 50.30 (1m) is amended to read:

ETF 50.30 (1m) For purposes of eligibility under s. 40.63 (2), Stats., employment which is substantial gainful activity has intervened if, during any ~~month~~ twelve (12) consecutive calendar months beginning with the first of the month following the date since service for the participating employer terminated, the participant received aggregate earnings, wages, salary and other earned income exceeding ~~one–twelfth of~~ the annual dollar amount determined under s. 40.63 (11), Stats., that is in effect at the end of the 12 consecutive calendar month period.

SECTION 2. ETF 50.32. (4) is created to read:

ETF 50.32 (4) "Termination of employment" for the purpose of determining whether a person is a participating employe means the last day rendered services as defined under sub. (2).

SECTION 3. ETF 50.42 (8m) is created to read:

ETF 50.42 (8m) "Termination of employment" for the purpose of determining whether a claimant is a participating employe means the last day rendered services as defined under sub. (4).

SECTION 4. ETF 50.50 (1) (c) 3. is amended to read:

ETF 50.50 (1) (c) 3. Excluding earnings from the claimant's last participating employer, the claimant has not received aggregate earnings, wages, salary and other earned income in any ~~month since~~ twelve (12) consecutive calendar months beginning with the first of the month following the date the claimant last rendered services to the participating employer exceeding ~~one–twelfth of the earnings limit in effect during the period in question~~ the annual dollar amount determined under s. 50.32 (3) that is in effect at the end of the 12 consecutive calendar month period.

Initial Regulatory Flexibility Analysis

The Department anticipates that the provisions of this proposed rule will have no direct adverse effect on small businesses.

Fiscal Estimate

The Department estimates that there will be no direct fiscal impact from this rule–making upon the state and anticipates no effect upon the fiscal liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education school district or sewerage district.

Copies of Rule

Copies of this rule are available without cost by making a request to:

Department of Employe Trust Funds
Office of the Secretary
P.O. Box 7931
Madison, WI 53707–7931

Telephone (608) 266–1071

Contact Information

For questions about this rule–making, please call:

Diane M. Bass
Disability Programs Bureau
Division of Insurance Services
Telephone (608) 266–8083

Notice of Hearing

Financial Institutions
(Division of Banking)
[CR 00–45]

Pursuant to s. 227.17, Stats, notice is hereby given that the Department of Financial Institutions, Division of Banking will hold a public hearing at the time and place indicated below to consider the creation of ch. DFI–Bkg 4, regarding financial subsidiaries.

Hearing Information

March 27, 2000
Monday
9:00 a.m.

Tommy G. Thompson
Conference Room
5th Floor
Dept. of Financial Institutions
345 W. Washington Ave.
Madison, WI 53703

This facility is accessible to individuals with disabilities through levels A, B or the first floor lobby. If you require reasonable accommodation to access any meeting, please call Lisa Bauer at (608) 264–7877 or TDY (608) 266–8818 for the hearing impaired at least 10 days prior to the hearing date. Reasonable accommodation includes materials prepared in an alternative format, as provided by the Americans with Disabilities Act.

Text of the Proposed Rule

SECTION 1. CHAPTER DFI—Bkg 4 is created to read:

Chapter DFI—Bkg 4
FINANCIAL SUBSIDIARIES

DFI—Bkg 4.01 DEFINITIONS. In this chapter:

(1) "Affiliate," "company," "control," and "subsidiary" have the meanings set forth in s. 221.0901, Stats.

(2) "Division" means the division of banking.

(3) "Financial activity" means any activity defined to be financial in nature or incidental to a financial activity for bank holding companies pursuant to 12 USC 1843(k)(4), and any activity determined by the Secretary of the Treasury to be financial in nature or incidental to a financial activity for financial subsidiaries of national banks in accordance with 12 USC 24a(b)(1)(B).

(4) "Financial institution" means a state bank chartered under ch. 221, Stats.

(5) "Financial subsidiary" means any company that is controlled by one or more insured depository institution other than a subsidiary that a financial institution is authorized to control under other applicable law, or a subsidiary that engages solely in activities that a financial institution is permitted to engage in directly and are conducted subject to the same terms and conditions that govern the conduct of such activities by the financial institution.

(6) "Insured depository institution" has the meaning set forth in 12 USC 1813(c)(2).

(7) "Well capitalized" has the meaning set forth in 12 USC 1831o(b)(1)(A).

DFI—Bkg 4.02 CONTROL AND INTEREST. Subject to s. DFI—Bkg 4.03 and s. DFI—Bkg 4.04, a financial institution may control a financial subsidiary or hold an interest in a financial subsidiary to engage in financial activities.

DFI—Bkg 4.03 APPLICATION. A financial institution desiring to control or hold an interest in a financial subsidiary shall apply to the division on forms prescribed by the division and shall pay the fee prescribed by the division. An application submitted to the division shall either be approved or disapproved by the division in writing within 30 days after its submission to the division. The division and the financial institution may mutually agree to extend the application period for an additional period of 30 days.

DFI—Bkg 4.04 CONDITIONS AND REQUIREMENTS. (1) A financial institution may control a financial subsidiary or hold an interest in a financial subsidiary to engage in financial activities only if the financial subsidiary engages in financial activities or activities in which the financial institution is permitted to engage under other applicable law. The financial subsidiary may also engage in any other activity approved by rule of the division. However, the financial subsidiary may not engage in any activity as a principal that is not permissible for a financial subsidiary of a national bank as a principal unless the activity is authorized by the Federal Deposit Insurance Corporation pursuant to 12 USC 1831a.

(2) The financial institution must receive the prior approval of the division to control or hold an interest in a financial subsidiary.

(3) The financial institution and each insured depository institution affiliate of the financial institution must be well capitalized (after the capital deduction required under s. DFI—Bkg 4.05)).

(4) The financial institution must meet any requirements of 12 USC 1831w applicable to the financial institution.

(5) The division may establish additional limits or requirements on financial institutions and financial subsidiaries if the division determines that the limits or requirements are necessary for the protection of depositors, members, investors or the public.

(6) For any period during which a financial institution fails to meet these requirements, the division may by order limit or restrict the activities of the financial subsidiary or require the divestiture of the financial institution's interest in the financial subsidiary.

DFI—Bkg 4.05 CAPITAL DEDUCTION. The aggregate amount of the outstanding equity investment, including retained earnings, of a financial institution in all financial subsidiaries controlled by the financial institution shall be deducted from the assets and tangible equity of the financial institution as determined by the division, and the assets and liabilities of the financial subsidiaries shall not be consolidated with those of the financial institution.

DFI—Bkg 4.06 DISCLOSURE. Any published financial statement of a financial institution that controls a financial subsidiary shall separately present financial information for the financial institution in the manner proved in s. DFI—Bkg 4.05.

DFI—Bkg 4.07 SAFEGUARDS FOR THE FINANCIAL INSTITUTION. A financial institution that establishes or maintains a financial subsidiary shall ensure the following:

(1) The procedures of the financial institution for identifying and managing financial and operational risk within the financial institution and the financial subsidiary adequately protect the financial institution from such risk;

(2) The financial institution has, for the protection of the financial institution, reasonable policies and procedures to preserve the separate corporate identity and limited liability of the financial institution and the financial subsidiaries of the financial institution; and

(3) The financial institution is in compliance with this requirement.

DFI—Bkg 4.08 AFFILIATE REQUIREMENTS. The financial institution must comply with the requirements of 12 USC 371c.

DFI—Bkg 4.09 PRESERVATION OF EXISTING SUBSIDIARIES. Notwithstanding this chapter, a financial institution may retain control of a subsidiary or retain an interest in a subsidiary that the financial institution lawfully controlled or acquired before the effective date of this chapter, and conduct through such subsidiary any activities lawfully conducted in such subsidiary as of such date. Furthermore, no provision of this chapter shall be construed as superseding the authority for financial institutions to conduct operations through subsidiaries under s. DFI—Bkg 3.04.

DFI—Bkg 4.10 EXAMINATION AND SUPERVISION. Each financial subsidiary shall be subject to examination and supervision by the division in the same manner and to the extent as the financial institution.

DFI—Bkg 4.11 REPORT OF DISPOSITION OF FINANCIAL SUBSIDIARY. Prior to disposition of a financial subsidiary, the financial institution shall inform the division by letter of the terms of the transaction.

Reference to Statutory Authority and Analysis Prepared by Department of Financial Institutions, Division of Banking

Analysis: To create ch. DFI—Bkg 4. Statutory authority: Ss. 220.02(2), 221.0322(2) and 227.11(2). The proposed rule would allow state–chartered banks to control or hold an interest in financial subsidiaries that would engage in activities that are financial in nature or incidental to a financial activity. The objective of the rule is to ensure that state–chartered banks will not be at a competitive disadvantage to other financial institutions that have received similar authority under the Gramm–Leach–Bliley Act of 1999 ("Act"). National banks are permitted under the Act to control or hold an interest in financial subsidiaries to engage in certain activities that are financial in nature or incidental to a financial activity. These financial activities are broader than "the business of banking or incidental to the business of banking activities" currently permitted for subsidiaries of state–chartered banks under s. DFI–Bkg. 3.04. Furthermore, state–chartered banks are permitted by s. 221.0322(1)., Stats., to undertake any activity, exercise any power, or offer any financially–related product or service in the state that any other provider of financial products or services may undertake, exercise or provide, or that the division finds to be financially related. Lastly, the proposed rule is consistent with Section 121(d) of the Act which permits insured state banks to control or hold an interest in a financial subsidiary subject to safety and soundness firewalls. The proposed rule would be the implementing provision under state law which may be necessary for state–chartered banks to exercise this new authority. Under the proposed rule, a financial institution may apply to the division to control or hold an interest in a financial subsidiary to engage in financial activities. The financial institution must meet certain conditions and requirements, and additional provisions regarding capital deduction, disclosure, safeguarding policy and procedures, and affiliate requirements apply. The division shall examine and supervise each financial subsidiary. Prior to disposition of a financial subsidiary, the financial institution shall inform the division. Agency person to be contacted for substantive questions and responsible for agency's internal process: Michael J. Mach, Administrator, Division of Banking, tel. 266–0451.

Fiscal Estimate

The fiscal effect on the state may be to increase existing revenues. Any increase in costs may be possible to absorb within the agency's budget. There is no local government cost. The fund source affected is program. The proposed rule provides that a financial institution desiring to control or hold an interest in a financial subsidiary shall apply to the division on forms prescribed by the division and shall pay the fee prescribed by the division. For similar types of applications, such as branch applications, the division has established a fee of $500. Current staff will review the applications. There are 267 state–chartered banks. It is estimated that approximately 125 state–chartered banks may establish financial subsidiaries over the next five years, or that the division will receive 25 application s a year for each of the next five years. Fiscal

effect for the first year is $12,500. A copy of the full fiscal estimate may be obtained from the division at no charge by contacting Michael J. Mach, Administrator, Department of Financial Institutions, Division of Banking, P.O. Box 7876, Madison, WI 53707–7876, tel. (608) 266–0451.

Initial Regulatory Flexibility Analysis

The proposed rule will not have an effect on small businesses.

Notice of Hearing

Financial Institutions
(Division of Savings Banks)
[CR 00–45]

Pursuant to s. 227.17, Stats, notice is hereby given that the Department of Financial Institutions, Division of Savings Institutions will hold a public hearing at the time and place indicated below to consider the creation of ch. DFI–SB 19, regarding financial subsidiaries.

Hearing Information

March 27, 2000
Monday
9:00 a.m.

Tommy G. Thompson
Conference Room
5th Floor
Dept. of Financial Institutions
345 W. Washington Ave.
Madison, WI 53703

This facility is accessible to individuals with disabilities through levels A, B or the first floor lobby. If you require reasonable accommodation to access any meeting, please call Lisa Bauer at (608) 264–7877 or TDY (608) 266–8818 for the hearing impaired at least 10 days prior to the hearing date. Reasonable accommodation includes materials prepared in an alternative format, as provided by the Americans with Disabilities Act.

Text of the Proposed Rule

SECTION 1. CHAPTER DFI—SB 19 is created to read:

Chapter DFI—SB 19
FINANCIAL SUBSIDIARIES

DFI—SB 19.01 DEFINITIONS. In this chapter:

(1) "Affiliate," "company," "control," and "subsidiary" have the meanings set forth in s. 221.0901, Stats.

(2) "Division" means the division of savings institutions.

(3) "Financial activity" means any activity defined to be financial in nature or incidental to a financial activity for bank holding companies pursuant to 12 USC 1843(k)(4), and any activity determined by the Secretary of the Treasury to be financial in nature or incidental to a financial activity for financial subsidiaries of national banks in accordance with 12 USC 24a(b)(1)(B).

(4) "Financial institution" means a state savings bank chartered under ch. 214, Stats.

(5) "Financial subsidiary" means any company that is controlled by one or more insured depository institution other than a subsidiary that a financial institution is authorized to control under other applicable law, or a subsidiary that engages solely in activities that a financial institution is permitted to engage in directly and are conducted subject to the same terms and conditions that govern the conduct of such activities by the financial institution.

(6) "Insured depository institution" has the meaning set forth in 12 USC 1813(c)(2).

(7) "Well capitalized" has the meaning set forth in 12 USC 1831o(b)(1)(A).

DFI—SB 19.02 CONTROL AND INTEREST. Subject to s. DFI—SB 19.03 and s. DFI—SB 19.04, a financial institution may control a financial subsidiary or hold an interest in a financial subsidiary to engage in financial activities.

DFI—SB 19.03 APPLICATION. A financial institution desiring to control or hold an interest in a financial subsidiary shall apply to the division on forms prescribed by the division and shall pay the fee prescribed by the division. An application submitted to the division shall either be approved or disapproved by the division in writing within 30 days after its submission to the division. The division and the financial institution may mutually agree to extend the application period for an additional period of 30 days.

DFI—SB 19.04 CONDITIONS AND REQUIREMENTS. (1) A financial institution may control a financial subsidiary or hold an interest in a financial subsidiary to engage in financial activities only if the financial subsidiary engages in financial activities or activities in which the financial institution is permitted to engage under other applicable law. The financial subsidiary may also engage in any other activity

approved by rule of the division. However, the financial subsidiary may not engage in any activity as a principal that is not permissible for a financial subsidiary of a national bank as a principal unless the activity is authorized by the Federal Deposit Insurance Corporation pursuant to 12 USC 1831a.

(2) The financial institution must receive the prior approval of the division to control or hold an interest in a financial subsidiary.

(3) The financial institution and each insured depository institution affiliate of the financial institution must be well capitalized (after the capital deduction required under ch. DFI—SB 19.05)).

(4) The financial institution must meet any requirements of 12 USC 1831w applicable to the financial institution.

(5) The division may establish additional limits or requirements on financial institutions and financial subsidiaries if the division determines that the limits or requirements are necessary for the protection of depositors, members, investors or the public.

(6) For any period during which a financial institution fails to meet these requirements, the division may by order limit or restrict the activities of the financial subsidiary or require the divestiture of the financial institution's interest in the financial subsidiary.

DFI—SB 19.05 CAPITAL DEDUCTION. The aggregate amount of the outstanding equity investment, including retained earnings, of a financial institution in all financial subsidiaries controlled by the financial institution shall be deducted from the assets and tangible equity of the financial institution as determined by the division, and the assets and liabilities of the financial subsidiaries shall not be consolidated with those of the financial institution.

DFI—SB 19.06 DISCLOSURE. Any published financial statement of a financial institution that controls a financial subsidiary shall separately present financial information for the financial institution in the manner proved in s. DFI—SB 19.05.

DFI—SB 19.07 SAFEGUARDS FOR THE FINANCIAL INSTITUTION. A financial institution that establishes or maintains a financial subsidiary shall ensure the following:

(1) The procedures of the financial institution for identifying and managing financial and operational risk within the financial institution and the financial subsidiary adequately protect the financial institution from such risk;

(2) The financial institution has, for the protection of the financial institution, reasonable policies and procedures to preserve the separate corporate identity and limited liability of the financial institution and the financial subsidiaries of the financial institution; and

(3) The financial institution is in compliance with this requirement.

DFI—SB 19.08 AFFILIATE REQUIREMENTS. The financial institution must comply with the requirements of 12 USC 371c.

DFI—SB 19.09 PRESERVATION OF EXISTING SUBSIDIARIES. Notwithstanding this chapter, a financial institution may retain control of a subsidiary or retain an interest in a subsidiary that the financial institution lawfully controlled or acquired before the effective date of this chapter, and conduct through such subsidiary any activities lawfully conducted in such subsidiary as of such date. Furthermore, no provision of this chapter shall be construed as superseding the authority for financial institutions to conduct operations through subsidiaries under ch. DFI—SB 15.

DFI—SB 19.10 EXAMINATION AND SUPERVISION. Each financial subsidiary shall be subject to examination and supervision by the division in the same manner and to the extent as the financial institution.

DFI—SB 19.11 REPORT OF DISPOSITION OF FINANCIAL SUBSIDIARY. Prior to disposition of a financial subsidiary, the financial institution shall inform the division by letter of the terms of the transaction.

Reference to Statutory Authority and Analysis Prepared by Department of Financial Institutions, Division of Banking

Analysis: To create ch. DFI—SB 19. Statutory authority: Ss. 214.715(1), 214.03(1) and (2), and 227.11(2), Stats. The proposed rule would allow state–chartered savings banks to control or hold an interest in financial subsidiaries that would engage in activities that are financial in nature or incidental to a financial activity. The objective of the rule is to ensure that state–chartered savings banks will not be at a competitive disadvantage to other financial institutions that have received similar authority under the Gramm–Leach–Bliley Act of 1999 ("Act"). National banks are permitted under the Act to control or hold an interest in financial subsidiaries to engage in certain activities that are financial in nature or incidental to a financial activity. These financial activities are broader than the parity provisions of s. 214.03(1) and (2), Stats., and the subsidiary provisions of s. 214.49, Stats. and DFI—SB 15. Lastly, the proposed rule is consistent with Section 121(d) of the Act which permits insured state savings banks to control or hold an interest in a financial subsidiary subject to safety and soundness firewalls. The proposed rule would be the implementing provision under state law which may be necessary for state–chartered savings banks to exercise this new authority. Under the proposed rule, a financial institution may apply to the division to control or hold an interest in a financial subsidiary to engage in financial activities. The financial institution must meet certain conditions and requirements, and additional provisions regarding capital deduction, disclosure, safeguarding policy and procedures, and affiliate requirements apply. The division shall examine and supervise each financial subsidiary. Prior to disposition of a financial subsidiary, the financial institution shall inform the division. Agency person to be contacted for substantive questions and responsible for agency's internal process: John A. Gervasi, Administrator, Division of Savings Institutions, tel. 261–2300.

Fiscal Estimate

The fiscal effect on the state may be to increase existing revenues. Any increase in costs may be possible to absorb within the agency's budget. There is no local government cost. The fund source affected is program. The proposed rule provides that a financial institutions desiring to control or hold an interest in a financial subsidiary shall apply to the division on forms prescribed by the division and shall pay the fee prescribed by the division. For similar types of applications, such as branch applications, the division has established a fee of $500. Current staff will review the applications. There are 21 state–chartered savings banks. If all state–chartered savings banks establish a financial subsidiary, the fiscal effect would be $10,500. A copy of the full fiscal estimate may be obtained from the division at no charge by contacting John A. Gervasi, Administrator, Department of Financial Institutions, Division of Savings Institutions, P.O. Box 8306, Madison, WI 53708–8306, tel. (608) 261–2300.

Initial Regulatory Flexibility Analysis

The proposed rule will not have an effect on small businesses.

Notice of Hearing

Financial Institutions

(Division of Savings & Loans)

[CR 00–45]

Pursuant to s. 227.17, Stats, notice is hereby given that the Department of Financial Institutions, Division of Savings Institutions will hold a public hearing at the time and place indicated below to consider the creation of ch. DFI–SL 21, regarding financial subsidiaries.

Hearing Information

March 27, 2000
Monday
9:00 a.m.

Tommy G. Thompson
Conference Room
5th Floor
Dept. of Financial Institutions
345 W. Washington Ave.
Madison, WI 53703

This facility is accessible to individuals with disabilities through levels A, B or the first floor lobby. If you require reasonable accommodation to access any meeting, please call Lisa Bauer at (608) 264–7877 or TDY (608) 266–8818 for the hearing impaired at least 10 days prior to the hearing date. Reasonable accommodation includes materials prepared in an alternative format, as provided by the Americans with Disabilities Act.

Text of the Proposed Rule

SECTION 1. CHAPTER DFI—SL 21 is created to read:

Chapter DFI—SL 21
FINANCIAL SUBSIDIARIES

DFI—SL 21.01 DEFINITIONS. In this chapter:

(1) "Affiliate," "company," "control," and "subsidiary" have the meanings set forth in s. 221.0901, Stats.

(2) "Division" means the division of savings institutions.

(3) "Financial activity" means any activity defined to be financial in nature or incidental to a financial activity for bank holding companies pursuant to 12 USC 1843(k)(4), and any activity determined by the Secretary of the Treasury to be financial in nature or incidental to a financial activity for financial subsidiaries of national banks in accordance with 12 USC 24a(b)(1)(B).

(4) "Financial institution" means a state savings and loan chartered under ch. 215, Stats.

(5) "Financial subsidiary" means any company that is controlled by one or more insured depository institution other than a subsidiary that a financial institution is authorized to control under other applicable law, or a subsidiary that engages solely in activities that a financial institution is permitted to engage in directly and are conducted subject to the same terms and conditions that govern the conduct of such activities by the financial institution.

(6) "Insured depository institution" has the meaning set forth in 12 USC 1813(c)(2).

(7) "Well capitalized" has the meaning set forth in 12 USC 1831o(b)(1)(A).

DFI—SL 21.02 CONTROL AND INTEREST. Subject to s. DFI—SL 21.03 and s. DFI—SL 21.04, a financial institution may control a financial subsidiary or hold an interest in a financial subsidiary to engage in financial activities.

DFI—SL 21.03 APPLICATION. A financial institution desiring to control or hold an interest in a financial subsidiary shall apply to the division on forms prescribed by the division and shall pay the fee prescribed by the division. An application submitted to the division shall either be approved or disapproved by the division in writing within 30 days after its submission to the division. The division and the financial institution may mutually agree to extend the application period for an additional period of 30 days.

DFI—SL 21.04 CONDITIONS AND REQUIREMENTS. (1) A financial institution may control a financial subsidiary or hold an interest in a financial subsidiary to engage in financial activities only if the financial subsidiary engages in financial activities or activities in which the financial institution is permitted to engage under other applicable law. The financial subsidiary may also engage in any other activity approved by rule of the division. However, the financial subsidiary may not engage in any activity as a principal that is not permissible for a financial subsidiary of a national bank as a principal unless the activity is authorized by the Federal Deposit Insurance Corporation pursuant to 12 USC 1831a.

(2) The financial institution must receive the prior approval of the division to control or hold an interest in a financial subsidiary.

(3) The financial institution and each insured depository institution affiliate of the financial institution must be well capitalized (after the capital deduction required under ch. DFI—SL 21.05)).

(4) The financial institution must meet any requirements of 12 USC 1831w applicable to the financial institution.

(5) The division may establish additional limits or requirements on financial institutions and financial subsidiaries if the division determines that the limits or requirements are necessary for the protection of depositors, members, investors or the public.

(6) For any period during which a financial institution fails to meet these requirements, the division may by order limit or restrict the activities of the financial subsidiary or require the divestiture of the financial institution's interest in the financial subsidiary.

DFI—SL 21.05 CAPITAL DEDUCTION. The aggregate amount of the outstanding equity investment, including retained earnings, of a financial institution in all financial subsidiaries controlled by the financial institution shall be deducted from the assets and tangible equity of the financial institution as determined by the division, and the assets and liabilities of the financial subsidiaries shall not be consolidated with those of the financial institution.

DFI—SL 21.06 DISCLOSURE. Any published financial statement of a financial institution that controls a financial subsidiary shall separately present financial information for the financial institution in the manner proved in s. DFI—SL 21.05.

DFI—SL 21.07 SAFEGUARDS FOR THE FINANCIAL INSTITUTION. A financial institution that establishes or maintains a financial subsidiary shall ensure the following:

(1) The procedures of the financial institution for identifying and managing financial and operational risk within the financial institution and the financial subsidiary adequately protect the financial institution from such risk;

(2) The financial institution has, for the protection of the financial institution, reasonable policies and procedures to preserve the separate corporate identity and limited liability of the financial institution and the financial subsidiaries of the financial institution; and

(3) The financial institution is in compliance with this requirement.

DFI—SL 21.08 AFFILIATE REQUIREMENTS. The financial institution must comply with the requirements of 12 USC 371c.

DFI—SL 21.09 PRESERVATION OF EXISTING SUBSIDIARIES. Notwithstanding this chapter, a financial institution may retain control of a subsidiary or retain an interest in a subsidiary that the financial institution lawfully controlled or acquired before the effective date of this chapter, and conduct through such subsidiary any activities lawfully conducted in such subsidiary as of such date. Furthermore, no provision of this chapter shall be construed as superseding the authority for financial institutions to conduct operations through subsidiaries under ch. DFI—SL 15.

DFI—SL 21.10 EXAMINATION AND SUPERVISION. Each financial subsidiary shall be subject to examination and supervision by the division in the same manner and to the extent as the financial institution.

DFI—SL 21.11 REPORT OF DISPOSITION OF FINANCIAL SUBSIDIARY. Prior to disposition of a financial subsidiary, the financial institution shall inform the division by letter of the terms of the transaction.

Reference to Statutory Authority and Analysis Prepared by Department of Financial Institutions, Division of Banking

Analysis: To create ch. DFI—SL 21. Statutory authority: ss. 215.03(1), 215.135(1) and (2), and 227.11(2), Stats. The proposed rule would allow state–chartered savings and loans to control or hold an interest in financial subsidiaries that would engage in activities that are financial in nature or incidental to a financial activity. The objective of the rule is to ensure that state–chartered savings and loans will not be at a competitive disadvantage to other financial institutions that have received similar authority under the Gramm–Leach–Bliley Act of 1999 ("Act"). National banks are permitted under the Act to control or hold an interest in financial subsidiaries to engage in certain activities that are financial in nature or incidental to a financial activity. These financial activities are broader than the additional authority provisions of s. 215.135(1) and (2), Stats., and the subsidiary provisions of s. 215.13(26), Stats. and DFI—SL 15. Lastly, the proposed rule is consistent with Section 121(d) of the Act which permits insured state savings and loans to control or hold an interest in a financial subsidiary subject to safety and soundness firewalls. The proposed rule would be the implementing provision under state law which may be necessary for state–chartered savings and loans to exercise this new authority. Under the proposed rule, a financial institution may apply to the division to control or hold an interest in a financial subsidiary to engage in financial activities. The financial institution must meet certain conditions and requirements, and additional provisions regarding capital deduction, disclosure, safeguarding policy and procedures, and affiliate requirements apply. The division shall examine and supervise each financial subsidiary. Prior to disposition of a financial subsidiary, the financial institution shall inform the division. Agency person to be contacted for substantive questions and responsible for agency's internal process: John A. Gervasi, Administrator, Division of Savings Institutions, tel. 261–2300.

Fiscal Estimate

The fiscal effect on the state may be to increase existing revenues. Any increase in costs may be possible to absorb within the agency's budget. There is no local government cost. The fund source affected is program. The proposed rule provides that a financial institution desiring to control or hold an interest in a financial subsidiary shall apply to the division on forms prescribed by the division and shall pay the fee prescribed by the division. For similar types of applications, such as branch applications, the division has established a fee of $500. Current staff will review the applications. There are 9 state–chartered savings and loans. If all state–chartered savings and loans establish a financial subsidiary, the fiscal effect would be $4,500. A copy of the full fiscal estimate may be obtained from the division at no charge by contacting John A. Gervasi, Administrator, Department of Financial Institutions, Division of Savings Institutions, P.O. Box 8306, Madison, WI 53708–8306, tel. (608) 261–2300.

Initial Regulatory Flexibility Analysis

The proposed rule will not have an effect on small businesses.

Notice of Hearing

Regulation & Licensing

[CR 00–18]

Notice is hereby given that pursuant to authority vested in the Department of Regulation and Licensing in ss. 227.11 (2) and 440.62 (5) (b), Stats., and interpreting s. 440.62 (5) (b), Stats., the Department of Regulation and Licensing will hold a public hearing at the time and place indicated below to consider an order to amend s. RL 62.11 (1) (L), relating to holding classes outside of the classroom.

Hearing Information

April 3, 2000
Monday
10:15 A.M.

1400 East Washington Ave.
Room 179A
Madison, Wisconsin

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by **April 17, 2000** to be included in the record of rule–making proceedings.

Analysis prepared by the Department of Regulation and Licensing

Statutes authorizing promulgation: ss. 227.11 (2) and 440.62 (5) (b)

Statute interpreted: s. 440.62 (5) (b)

The Department of Regulation and Licensing proposes to revise its rules to allow students in a barbering and cosmetology practitioner, manicuring, aesthetician or electrologists school program to attend classes outside of their school. Under current rules, classes may only be held at the location of the school identified in its latest application. These proposed rules would allow students to receive classroom credit for visiting an actual establishment.

The department believes it is important for students to receive exposure to the current industry trends and techniques necessary for the protection of the health, safety and welfare of the Wisconsin citizenry.

Fiscal Estimate

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: $0.00.
2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: $0.00.
3. The projected net annualized fiscal impact on state funds of the proposed rule is: $0.00.

Initial Regulatory Flexibility Analysis

These proposed rules will be reviewed by the department through its Small Business Review Advisory Committee to determine whether there will be an economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

Copies Of Rule And Contact Person

Copies of this proposed rule are available without cost upon request to: Pamela Haack, Department of Regulation and Licensing, Office of Administrative Rules, 1400 East Washington Avenue, Room 171, P.O. Box 8935, Madison, Wisconsin 53708 (608) 266–0495.

Notice of Proposed Rule

Revenue

[CR 00–16]

Notice is hereby given that, pursuant to s. 71.80(1)(c), Stats., and interpreting ss. 71.03(6m), 71.51 to 71.55, 71.58(1)(b), 71.74(8)(a), 71.75(2) and (7), 71.77(2) and 71.82(1)(c), Stats., and according to the procedure set forth in s. 227.16(2)(e), Stats., the Department of Revenue will adopt the following rules as proposed in this notice without public hearing unless, within 30 days after publication of this notice on **March 15, 2000**, it is petitioned for a public hearing by 25 natural persons who will be affected by the rule, a municipality which will be affected by the rule, or an association which is representative of a farm, labor, business or professional group which will be affected by the rule.

Contact Person

Please contact Mark Wipperfurth at (608) 266–8253, if you have any questions regarding this proposed rule order.

Analysis by the Department of Revenue

Statutory authority: s. 71.80(1)(c)

Statutes interpreted: ss. 71.03(6m), 71.51 to 71.55, 71.58(1)(b), 71.74(8)(a), 71.75(2) and (7), 71.77(2) and 71.82(1)(c)

SECTION 1. Tax 14.01(1) and (2)(intro.) are revised, to conform language and punctuation to Legislative Council Rules Clearinghouse ("Clearinghouse") standards.

SECTION 2. Tax 14.01(2)(a), (b), (c) and (d) are renumbered Tax 14.01(2)(b), (c), (d) and (a), to place the definitions in alphabetical order after changing "general relief" to "county relief," to conform to Clearinghouse standards. As renumbered, Tax 14.01(2)(a) is revised, to update language relating to county relief and Tax 14.01(2)(b) is revised, to conform language to Clearinghouse standards.

SECTION 3. Tax 14.01(3)(a) is revised, to conform language to Clearinghouse standards.

Tax 14.01(4) is revised, to reflect proper filing procedures and to conform style to Clearinghouse standards.

SECTIONS 4, 5 AND 6. Tax 14.01(5)(a) is renumbered Tax 14.01(5)(a)(intro.) and revised, Tax 14.01(5)(a)1. and 2. are created and Tax 14.01(5)(b) is revised, to reflect proper filing deadlines and statutory references, relating to filing an original or amended homestead credit claim.

Tax 14.01(6) is revised, to clarify a provision relating to deceased persons and to conform style and punctuation to Clearinghouse standards.

SECTIONS 7 AND 8. Tax 14.01(7) is renumbered Tax 14.01(7)(a)(intro.) and revised, and Tax 14.01(7)(a)1. to 4. and (b) are created, to reflect proper procedures for adjusting incorrect claims.

SECTION 9. Tax 14.01(8) is revised, to more accurately reflect the content of the subsection and update the provisions relating to the imposition of interest, and to conform punctuation to Clearinghouse standards.

SECTIONS 10 AND 11. Tax 14.02(2)(c) is repealed and Tax 14.02(9) is revised, and notes are created, to place a mailing address in a note rather than in the text of the rule, to conform to Clearinghouse standards.

Tax 14.02(5) is revised, to reflect proper terminology relating to property taxes.

Tax 14.02(10) is revised, to conform format to Clearinghouse standards.

Tax 14.02(11) is revised, to clarify that a person who is deceased cannot be a claimant.

SECTIONS 12 AND 13. Tax 14.03(2)(intro.) is created and Tax 14.03(3)(a), (b) and (c)2. are revised, to conform style and punctuation to Clearinghouse standards.

Tax 14.03(4)(b)(intro.) is revised, to reflect the content of the paragraph as amended.

Tax 14.03(4)(b)2. is revised, to clarify a provision relating to support payments.

SECTION 14. Tax 14.03(4)(b)3. is repealed and recreated, to update provisions relating to cash public assistance and county relief and to list additional items of income that are includable.

SECTIONS 15 AND 16. Tax 14.03(4)(b)5.(intro.) is revised and Tax 14.03(4)(b)5.e. is created, to clarify provisions relating to social security payments.

Tax 14.03(4)(b)5.a. is revised, to conform punctuation to Clearinghouse standards.

SECTION 17. Tax 14.03(4)(b)7. is revised, to clarify a provision relating to payments to survivors of deceased veterans.

Tax 14.03(4)(b)11. is revised, to clarify a provision relating to scholarship income.

Tax 14.03(4)(b)12. is revised, to update terminology relating to unemployment insurance.

Tax 14.03(4)(b)14. and 15. are revised, to update and clarify provisions relating to gain from the sale of a personal residence, pursuant to the amendment of s. 71.01(6), Stats., by 1997 Wis. Act 37.

Tax 14.03(4)(b)20. is revised, to update terminology relating to Native Americans.

SECTION 18. Tax 14.03(4)(b)23.(intro.) and a. to i. are renumbered Tax 14.03(4)(c)(intro.) and 1. to 9., to list items deducted in determining Wisconsin adjusted gross income in a separate paragraph. As renumbered, Tax 14.03(4)(c)(intro.) is revised, to add a reference to items deducted in determining limited liability company income or losses, and Tax 14.03(4)(c)6. is revised, to add a reference to contributions to SIMPLEs and to conform punctuation to Clearinghouse standards.

SECTION 19. Tax 14.03(5) is repealed and recreated, to clarify provisions relating to exclusions from income and list additional items that constitute exclusions from income. This includes previously reported scholarship income, pursuant to the amendment of s. 71.52(6), Stats., by 1997 Wis. Act 27.

SECTION 20. Tax 14.04(2) is revised, to remove obsolete language relating to general property tax relief.

Tax 14.04(3)(b) and (c) are revised, to clarify various provisions relating to property taxes accrued.

Tax 14.04(4)(a) is revised, to remove obsolete provisions relating to verification of property taxes accrued.

Tax 14.04(4)(b)1. and 2. are revised, to conform punctuation to Clearinghouse standards.

Tax 14.04(4)(c) is revised, to clarify a provision relating to ownership of a mobile home and to conform language to Clearinghouse standards.

SECTION 21. Tax 14.04(5) is repealed and recreated, to update provisions relating to the reduction of property taxes accrued when certain public assistance payments are received.

SECTIONS 22 AND 23. Tax 14.04(8)(a) and (b) are revised and Tax 14.04(8)(c) is created, to clarify various provisions relating to allowable property taxes for a co−owned homestead.

SECTION 24. Tax 14.04(9)(a) and (b), (10)(a) and (11) are revised, to clarify various provisions relating to property taxes accrued and to conform language and punctuation to Clearinghouse standards.

SECTION 25. Tax 14.05(2) is repealed and recreated, to replace quoted statutory language relating to definitions with references to the statutes, and to provide that certain separate payments to a landlord are considered gross rent.

SECTIONS 26, 27,31, 32 AND 33. Tax 14.05(3)(b) is repealed and Tax 14.05(13)(a) is created, to place a provision regarding indirect rent payments by a governmental agency in a subsection relating to low−income housing.

As a result of the repeal of Tax 14.05(3)(b), Tax 14.05(3)(c) and (d) are renumbered Tax 14.05(3)(b) and (c). As renumbered, Tax 14.05(3)(b) is revised, to clarify a provision relating to property taxes for a homestead not owned by the claimant.

Due to the creation of new Tax 14.05(13)(a), the existing Tax 14.05(13)(a)(intro.) and (b) are renumbered Tax 14.05(13)(b) and (c). Tax 14.05(13)(a)1., 2. and 3. are repealed and Tax 14.05(13)(b) as renumbered is revised, to clarify a provision relating to computing rent paid for occupancy when subsidy payments from a governmental agency are received by the landlord.

SECTION 28. Tax 14.05(4)(a) is revised, to conform language to Clearinghouse standards.

Tax 14.05(4)(b) is revised, to clarify a provision relating to paying rent for more than one homestead during the year.

Tax 14.05(4)(c) is revised, to update procedures relating to preparing a rent certificate, and to conform language and punctuation to Clearinghouse standards.

Tax 14.05(4)(e) is revised, to update procedures relating to preparing a rent certificate when one cannot be obtained from the landlord.

SECTION 29. Tax 14.05(5) is repealed and recreated, to update provisions relating to the reduction of rent constituting property taxes accrued when certain public assistance payments are received.

SECTION 30. Tax 14.05(7) is revised, to replace quoted statutory language relating to non–arms length rental with explanatory language.

Tax 14.05(8)(a) and (d)(intro.) and 1. to 3., (12) and (13)(title) are revised, to conform language and punctuation to Clearinghouse standards.

Tax 14.05(8)(b) is revised, to reference s. 71.53(2)(e), Stats., to reflect the department's position that the paragraph also interprets that statute.

Tax 14.05(8)(c) is revised, to reflect the department's position that par. (c) applies to both par. (a) and par (b).

Tax 14.05(9)(a) is revised, to clarify a provision relating to joint occupancy of a rental unit.

SECTION 34. Tax 14.05(14)(a)1. is revised, effective with rent paid for calendar year 2000, to increase the "standard rate" for rent paid for occupancy by residents of nursing homes or long–term care facilities from $40 per week to $100 per week. This rate more accurately reflects the portion of payments to those types of facilities that constitutes rent paid for occupancy. It also more closely approximates the rent paid for occupancy as computed using the other department–approved method, the "percentage of building occupancy expenses" method. The standard rate has not been changed since March 1990.

Tax 14.05(14)(a)2. is revised, to include substantive material from an example, relating to the "percentage of building occupancy expenses" method of computing rent paid for occupancy by residents of nursing homes or long–term care facilities.

SECTIONS 35 AND 36. Tax 14.05(14)(b) is renumbered Tax 14.05(14)(b)1. and Tax 14.05(14)(b)2. is created, to clarify that a nursing home resident who received medical assistance during the year but is no longer receiving the assistance may be eligible to claim a homestead credit.

SECTION 37. Tax 14.06(title), (1) and (3)(c)(intro.) are revised, to conform punctuation to Clearinghouse standards.

Text of Rule

SECTION 1. Tax 14.01(1) and (2)(intro.) are amended to read:

Tax 14.01(1) PURPOSE. This section describes the Wisconsin homestead credit, defines terms~~,~~ and sets forth administrative provisions applicable to all sections of ~~ch. Tax 14~~ this chapter.

(2)(intro.) DEFINITIONS. In ~~ch. Tax 14~~ this chapter and in ss. 71.51 ~~through~~ to 71.55, Stats.:

Note to Revisor: Remove the statutory references following the titles to each section, Tax 14.01 to 14.06.

SECTION 2. Tax 14.01(2)(a), (b), (c) and (d) are renumbered Tax 14.01(2)(b), (c), (d) and (a) and as renumbered Tax 14.01(2)(a) and (b) are amended to read:

Tax 14.01(2)(a) "~~General~~ County relief" means ~~a basic~~ assistance ~~program~~ provided by a county under ~~ch. 49~~ s. 59.53(21), Stats., to an eligible dependent person. ~~General~~ County relief is a separate program in itself ~~and~~, funded by a block grant program under subch. II of ch. 49, Stats. It does not include other assistance programs, such as social security, supplemental security income, state supplemental payments, federal food stamps, Title XX benefits, community options program payments, aid to families with dependent children, Wisconsin works payments or foster care.

(b) "Domicile" has the same meaning for Wisconsin homestead credit purposes as for Wisconsin individual income tax purposes. A claimant's domicile is the true, fixed~~,~~ and permanent home where the claimant intends to remain permanently and indefinitely and to which, whenever absent, the claimant intends to return. It is often referred to as a "legal residence." A claimant may be physically present or residing in one locality and maintain a domicile in another but may have only one domicile at any time.

SECTION 3. Tax 14.01(3)(a) and (4) are amended to read:

Tax 14.01(3)(a) Sections 71.51 ~~through~~ to 71.55, Stats., provide credit in the form of an income tax credit or a refund to qualifying persons who own or rent their Wisconsin homestead. A claimant may claim Wisconsin property taxes accrued or rent constituting property taxes accrued or both on the claimant's homestead or, in certain cases as described in s. Tax 14.04(3)(e), Wisconsin property taxes accrued on the claimant's former homestead, as a basis for calculating a credit against Wisconsin income tax otherwise due. If the credit exceeds the claimant's Wisconsin income tax otherwise due or if no income tax is due, the amount not offset against Wisconsin income tax and not applied against any liability under s. 71.55(1), Stats., is paid to the claimant.

(4) HOW TO FILE. (a) A homestead credit claim shall be filed on ~~Schedule~~ schedule H, titled "Wisconsin Homestead Credit Claim," and filed with the ~~Wisconsin~~ department ~~of revenue~~ at the location described in the instructions to ~~Schedule~~ schedule H.

(b) If a person or the person's spouse files a Wisconsin income tax return and claims a homestead credit on the return, the claimant shall attach ~~Schedule~~ schedule H to the income tax return. If the claimant has previously filed the income tax return~~, the preferable~~ or is filing an income tax return separately from the schedule H, the preferred procedure for filing a homestead credit claim is to file a duplicate copy of the income tax return with ~~Schedule H,~~ schedule H and to write the words *"Duplicate"* on the top of the first page of the tax return copy and *"Income Tax Return ~~Previously~~ Separately Filed"* on the top of ~~Schedule H, and to fill in the date the income tax return was filed in the space provided on Schedule~~ schedule H.

(c) If neither the claimant nor the claimant's spouse is required to file a Wisconsin income tax return for the year to which the claim relates, the claimant may file ~~Schedule~~ schedule H without attaching it to a return.

SECTION 4. Tax 14.01(5)(a) is renumbered Tax 14.01(5)(a)(intro.) and amended to read:

Tax 14.01(5)(a)(intro.) Under ~~s. 71.53(2)~~ s. 71.53(2)(a), Stats., an original homestead credit claim shall be filed with the department ~~on or before December 31 of the year following the year to which the claim relates~~ in conformity with the filing requirements of s. 71.03(6), (6m) and (7), Stats., or the department shall disallow the claim. The deadline for filing a claim is as follows:

SECTION 5. Tax 14.01(5)(a)1. and 2. are created to read:

Tax 14.01(5)(a)1. A claim filed for a taxable year for which an income tax return is also filed shall be filed on a calendar year basis as provided in sub. (3)(c), within 4 years, 3 ½ months of the end of the calendar year to which the claim relates.

2. Under s. 71.03(6m), Stats., a claim filed by a person who is not required to file an income tax return shall be filed on a calendar year basis. The claim shall be filed within 4 years, 3 ½ months of the end of the calendar year to which the claim relates.

Example: A 1998 homestead credit claim filed for the calendar year ending December 31, 1998, must be filed by April 15, 2003.

SECTION 6. Tax 14.01(5)(b) and (6) are amended to read:

Tax 14.01(5)(b) ~~Under s. 71.53(3), Stats., a~~ A claimant who files a timely original claim may subsequently file an amended claim with the department. ~~An~~ Under s. 71.75(2), Stats., an amended claim shall be filed within 4 years of ~~December 31 of the year following the year to which the claim relates~~ the deadline for filing the original claim or the department shall disallow the claim.

Note to Revisor: Insert the following example at the end of sub. (5)(b):

Example: Claimant A, who filed a 1994 homestead credit claim on May 1, 1996, wishes to file an amended 1994 claim. The amended claim may be filed any time on or before April 15, 2003, since the deadline for filing the original 1994 claim was April 15, 1999.

(6) PROOF OF CLAIM. Under s. 71.55(7), Stats., for the purpose of determining the correct amount of homestead credit of a claimant, the claimant shall supply to the department all of the following information that is applicable:

(a) All information requested on the form~~;~~.

(b) Proper verification of property taxes accrued as provided in s. Tax 14.04(4), if the claimant claims property taxes accrued~~;~~.

(c) Proper verification of rent constituting property taxes accrued as provided in s. Tax 14.05(4), if the claimant claims rent constituting property taxes accrued~~;~~.

(d) The signature of the claimant. If a claimant is unable to sign a claim, the claimant may make an "X" or other mark with the assistance of another person who signs the claim as a witness to the validity of the signature. A legally authorized representative such as a guardian or attorney−in−fact may sign a homestead credit claim in lieu of ~~the~~ a living claimant, but a homestead credit claim filed on behalf of a ~~claimant~~ person who is deceased at the time of filing shall be denied as provided in s. Tax 14.02(11).

SECTION 7. Tax 14.01(7) is renumbered Tax 14.01(7)(a)(intro.) and amended to read:

Tax 14.01(7)(a)(intro.) ~~Under s. 71.74(8)(a), Stats., the~~ The department may give notice of an incorrect homestead credit amount ~~within 4 years from December 31 of the year following the year to which a homestead credit claim relates~~. The department may correct incorrect claims by adjusting the credit claimed, by assessment as income taxes are assessed~~,~~ or by refund, as appropriate. Under ss. 71.74(8)(a) and 71.77(2), Stats., unless the adjustment period is extended by a specific statutory provision, the notice shall be given by the later of 4 years from the unextended due date of the corresponding original income tax return or 4 years from the date a late−filed income tax return is filed. The statutory provisions under which the adjustment period may be extended include the following:

SECTION 8. Tax 14.01(7)(a)1. to 4. and (b) are created to read:

Tax 14.01(7)(a)1. The "intent to defeat or evade" provision under s. 71.77(3), Stats.

2. The "extension agreement" provision under s. 71.77(5), Stats.

3. The "six−year" provision under s. 71.77(7)(a), Stats.

4. The "federal change" provisions under s. 71.77(7)(b), Stats.

(b) Under s. 71.75(7), Stats., the department shall act on a claim for homestead credit within one year after it receives the claim, or the credit shall be allowed even if incorrect, unless the claimant has agreed in writing to an extension of the one−year time period. Within the one−year period, prior to allowing the credit, the claimed credit may be reduced. However, under s. 71.74(8)(a), Stats., if the date of acting on an amended claim is later than the last date for adjusting an original claim as provided in par. (a), the credit may not be reduced to an amount less than the credit allowed on the original claim, and after allowing the credit on the amended claim no further reduction of the credit may be made.

Example: Claimant A timely files a 1995 claim for homestead credit and receives a homestead credit of $500. On November 1, 2001, Claimant A files an amended 1995 claim for homestead credit claiming a revised 1995 credit of $700. Upon review of the file, the department determines that Claimant A's correct homestead credit for 1995 is $300 rather than the $500 allowed on the original claim or the $700 claimed on the amended claim.

Since the amended 1995 homestead credit claim will be acted on after April 15, 2000, the last date for adjusting an original 1995 claim, the department must act on the amended claim by November 1, 2002. Prior to that date the department may notify Claimant A that no additional credit is allowable for 1995. However, the $200 of excessive credit allowed on the original claim, the difference between the $500 allowed and the correct credit of $300, may not be recovered by the department.

SECTION 9. Tax 14.01(8) is amended to read:

Tax 14.01(8)(title) INTEREST ~~AND PENALTIES~~ ON INCORRECT CLAIMS. (a) *Excessive claims.* ~~Excessive~~ Under s. 71.82(1)(c), Stats., excessive homestead credit amounts, not the result of negligence or fraudulent intent, that have been paid or credited shall be subject to interest ~~as provided by s. 71.82(1)(c), Stats. The interest shall be imposed from the date on which the excessive amount was paid or credited, but not earlier than from December 31 of the year following the year to which the claim relates, to the date on which the amount when subsequently assessed will become delinquent if unpaid. If unpaid by the due date shown on the notice of adjustments to the homestead credit claim, the amount due, including interest, shall be subject to delinquent interest at the rate provided by s. 71.82(2)(a), Stats.~~ at 12% per year from the deadline for filing the claim. Assessments to collect excessive homestead credit amounts payable before the deadline for filing the claim may not include interest charges.

(b) *Understated claims.* Under s. 71.55(4), Stats., the department may not pay interest on any homestead credit, including any additional credit, refund~~,~~ or payment allowed as the result of the review of a homestead credit claim or an amended claim.

Note to Revisor: Replace the 2 notes at the end of Tax 14.01 with the following:

Note: Blank forms for filing a homestead credit claim, rent certificates and instructions for claiming the credit may be obtained at any department office throughout the state or by writing to Wisconsin Department of Revenue, P.O. Box 8903, Madison, WI 53708−8903.

Note: Section Tax 14.01 interprets ss. 71.03(6m), 71.51 to 71.55, 71.74(8)(a), 71.75(2) and (7), 71.77(2) and 71.82(1)(c), Stats.

SECTION 10. Tax 14.02(2)(c) is repealed.

Note to Revisor: 1) Insert the following note at the end of sub. (2)(b):

Note: Requests for a determination under par. (b) should be addressed to Wisconsin Department of Revenue, P.O. Box 8906, Madison, WI 53708−8906.

2) Replace the example at the end of sub. (4) with the following:

Example: A household owns and occupies a homestead in Wisconsin from January 1 to April 30, and then establishes a homestead in a rented dwelling in Wisconsin with no heat furnished for the remainder of the calendar year. The annual property taxes accrued on the owned homestead equaled $1,800 and gross rent paid for the last 8 months of the year totaled $2,800.

The property taxes and rent allowable for homestead credit purposes equals $1,300, consisting of four−twelfths of the $1,800 of property taxes accrued, or $600, plus 25% of the gross rent of $2,800, or $700 of rent constituting property taxes accrued.

SECTION 11. Tax 14.02(5), (9), (10) and (11) are amended to read:

Tax 14.02(5) HOUSEHOLD OCCUPYING MORE THAN ONE DWELLING AT THE SAME TIME. Under s. 71.52(2), Stats., "gross rent" is rental paid for the right of occupancy of a homestead, and under s. 71.52(7), Stats., "property taxes accrued" are property taxes levied on the homestead of a household. Since a homestead is the principal dwelling of a household, if a household pays gross rent or property taxes accrued on 2 dwellings occupied concurrently by ~~a~~ the household ~~are not allowable. The,~~ a claimant may claim only the rent or property taxes pertaining to the principal dwelling.

Note to Revisor: Replace example 2 at the end of sub. (5) with the following:

2) A claimant moves from one apartment to another and pays rent for both apartments for a two−month period.

(9) PERSON CLAIMING A FARMLAND PRESERVATION CREDIT. Under s. 71.58(1)(b), Stats., a person is not eligible for a homestead credit if the person qualifies for and claims a farmland preservation credit for the same year to which a homestead credit claim relates. However, if a person who has claimed a farmland preservation credit withdraws the claim, the person is no longer ineligible to receive a homestead credit because of the filing of a farmland preservation credit claim. Withdrawal of the farmland preservation credit claim shall be in writing ~~and should be mailed to the Wisconsin Department of Revenue, Post Office Box 8906, Madison, WI 53708~~. A homestead credit claim filed after the withdrawal of a farmland preservation credit claim shall be filed by the normal ~~due date~~ deadline for filing a homestead credit claim or the department shall disallow the claim.

Note to Revisor: Replace the example at the end of sub. (9) with the following example and add the following note:

Example: A 1997 homestead credit claim filed after the withdrawal of a 1997 farmland preservation credit claim must be filed on or before April 15, 2002.

Note: A written withdrawal of a farmland preservation credit claim should be mailed to Wisconsin Department of Revenue, P.O. Box 8906, Madison, WI 53708−8906.

(10) PERSON CLAIMED AS A DEPENDENT. Under s. 71.53(2)(d), Stats., a person does not qualify for a homestead credit if the person is claimed as a dependent for federal income tax purposes during the year to which the claim relates, unless the person claiming a homestead credit is 62 years of age or older as of December 31 of the claim year. However, a person is not disqualified if ~~the person~~ any of the following apply:

(a) ~~Is~~ The person is improperly claimed as a dependent on a federal income tax return~~;~~.

(b) ~~Qualifies~~ The person qualifies to be claimed as a dependent on a federal income tax return but is not claimed~~;or~~.

(c) ~~Is~~ The person is properly claimed as a dependent on a federal income tax return but on a later amended federal income tax return is not ~~so~~ claimed.

(11) DECEASED CLAIMANT. Under s. 71.53(1)(b), Stats., a ~~claimant~~ person must be alive at the time a homestead credit claim is filed. A claim completed and signed but not filed until after a ~~claimant's~~ person's death shall be denied.

Note to Revisor: Remove the "1)" from the first note at the end of Tax 14.02, and replace the second note with the following:

Note: Section Tax 14.02 interprets ss. 71.52(1), (2) and (7), 71.53(1)(b) and (c) and (2)(d) and 71.58(1)(b), Stats.

SECTION 12. Tax 14.03(2)(intro.) is created to read:

Tax 14.03(2)(intro.) DEFINITIONS. In this section:

SECTION 13. Tax 14.03(3)(a), (b) and (c)2. and (4)(b)(intro.) and 2. are amended to read:

Tax 14.03(3)(a) Under s. 71.52(5), Stats., a deduction of $250 is allowed for each of the claimant's dependents, as defined in s. 152 of the internal revenue code, who have the same principal abode as the claimant for more than 6 months during the calendar year to which a claim for homestead credit relates. A claimant may multiply the number of dependents with the same principal abode for more than 6 months by $250~~,~~ and subtract the result from the total of the income items~~,~~ to arrive at household income.

Note to Revisor: Replace the example at the end of sub. (3)(a) with the following:

Example: A claimant and the claimant's spouse claim 3 dependents on their 1997 federal income tax return, and all 3 dependents have the same principal abode as the claimant for the entire year. Household income items include Wisconsin adjusted gross income of $10,500, depreciation of $1,500 and unemployment insurance of $500.

Total household income is $11,750, consisting of the total of the income items listed, $12,500, minus the dependent deduction of $750, which is $250 times 3 dependents.

(b) A dependent is considered to have the same principal abode as the claimant during temporary absences from the claimant's homestead for reasons such as school attendance, illness, vacations, business commitments~~,~~ or military service.

(c)2. The dependent is adopted by the claimant, is placed with the claimant for adoption~~,~~ or becomes the stepchild of the claimant, and the dependent has the same principal abode as the claimant from that time to the end of that calendar year.

(4)(b)(intro.) The following amounts to the extent not included in Wisconsin adjusted gross income~~, or deducted in determining Wisconsin adjusted gross income~~:

2. ~~Support money~~ Court−ordered support payments, including support for dependents under ch. 49, Stats.

SECTION 14. Tax 14.03(4)(b)3. is repealed and recreated to read:

Tax 14.03(4)(b)3. Cash public assistance and county relief, including the following:

a. Aid to families with dependent children, or "AFDC."

b. Wisconsin works, or "W−2" payments.

c. Non−legally responsible relative, or "NLRR" AFDC payments or kinship care payments under s. 48.57, Stats. These are payments received as a relative other than a parent, for caring for a dependent child in the claimant's homestead.

d. Cash benefits paid by counties under s. 59.53(21), Stats.

e. Reimbursement from a governmental agency for amounts originally paid for by the recipient, not including cash reimbursements for home energy assistance or for services under Title XX of the federal social security act and community options program, or "COP" payments under s. 46.27, Stats.

f. Adoption assistance payments under Title IV−E of the federal social security act or from another state, or payments by the Wisconsin department of health and family services under s. 48.975, Stats., to adoptive parents of children having special needs as described in s. HSS 50.03(1)(b).

g. Veterans administration payments for reimbursement of services purchased by the recipient.

h. Federal housing and urban development, or "H.U.D." payments for housing.

i. Disaster relief grants under the federal disaster relief act of 1974.

SECTION 15. Tax 14.03(4)(b)5.(intro.) and a. are amended to read:

Tax 14.03(4)(b)5.(intro.) ~~All~~ Except as provided in subd. 3.e., all payments received for the benefit of a claimant or a member of the claimant's household under the federal social security act, including:

a. All federal social security retirement, disability~~,~~ or survivorship benefits.

Note to Revisor: Replace the example at the end of sub. (4)(b)4. with the following:

Example: *Gross amount of a pension*. A claimant was entitled to a pension of $8,000 during the year but received only $5,600 after $2,400 was withheld by the payor for payment of health insurance premiums for the claimant. Of the $8,000 pension, $2,000 was a return of the claimant's contribution.

The gross pension of $8,000 must be included in income.

SECTION 16. Tax 14.03(4)(b)5.e. is created to read:

Tax 14.03(4)(b)5.e. Supplemental security income − exceptional needs, or "SSI−E" payments under s. 49.77(3s), Stats.

SECTION 17. Tax 14.03(4)(b)7., 11., 12., 14., 15. and 20. are amended to read:

Tax 14.03(4)(b)7. Payments made to surviving widows, widowers or parents of ~~war~~ veterans by the United States, but not including insurance proceeds received by beneficiaries of National Service Life Insurance.

11. Scholarship and fellowship gifts~~, grants,~~ or income and other educational grants, not including student loans.

12. Unemployment ~~compensation~~ insurance, including railroad unemployment compensation.

14. Capital gains not included in Wisconsin adjusted gross income, but not including ~~a gain on the sale of a personal residence deferred under s. 1034 of the internal revenue code or~~ a nonrecognized gain from an involuntary conversion under s. 1033 of the internal revenue code.

15. A gain on the sale of a personal residence excluded under s. 121 of the internal revenue code~~, which is the once−in−a−lifetime exclusion for a qualifying sale by a person age 55 or older~~. A gain on the sale of a personal residence which would be reportable under the installment sale method if taxable may be reported either in full in the year of sale or each year as payments are received.

20. Income of ~~an~~ a Native American ~~Indian~~ which is nontaxable under ch. 71, Stats.

SECTION 18. Tax 14.03(4)(b)23.(intro.) and a. to i. are renumbered Tax 14.03(4)(c)(intro.) and 1. to 9. and as renumbered Tax 14.03(4)(c)(intro.) and 6. are amended to read:

Tax 14.03(4)(c)(intro.) The following items deducted in determining Wisconsin adjusted gross income, including items deducted in arriving at partnership, limited liability company and tax−option "S" corporation income or losses reported as a part of Wisconsin adjusted gross income:

6. Contributions to individual retirement accounts under s. 219 of the internal revenue code, including contributions to individual retirement arrangements, or ~~"IRA's,"~~ "IRAs," savings incentive match plans for employes, or "SIMPLEs" and simplified employe pension plans, or ~~"SEP's."~~ "SEPs."

SECTION 19. Tax 14.03(5) is repealed and recreated to read:

Tax 14.03(5) EXCLUSIONS FROM INCOME. (a) Under s. 71.52(6), Stats., income does not include the following:

1. Amounts described in sub. (4)(b)1., 3.e., 7., 11. and 14. as not being includable.
2. Gifts from natural persons, including voluntary support payments.
3. Relief in kind by a governmental agency, including surplus food, food stamps and payments directly to a supplier of goods or services, such as medical care, food, clothing and residential energy.
4. The nontaxable portions of lump sum insurance proceeds received:

a. For a recipient's disability or loss of limb.

b. By a beneficiary of a decedent's life insurance policy.

c. From the surrender of any portion of an insurance policy that does not constitute a personal endowment insurance policy or an annuity contract purchased by the recipient.

5. Wisconsin homestead credit amounts received.
6. Social security or SSI payments received on behalf of a claimant's children or the children of the claimant's household.
7. Pension, annuity or other retirement plan payments rolled over from one retirement plan to another.
8. Tax−free exchanges of insurance contracts under s. 1035 of the internal revenue code.
9. Crime victim compensation payments under ch. 949, Stats.
10. Payments under the Wisconsin petroleum cleanup fund act.
11. "Foster grandparents program" payments under the federal domestic volunteer service act of 1973.
12. Community spouse income allowance payments under the Wisconsin spousal impoverishment program, except the portion of the payments includable under Wisconsin marital property law.

Note: The determination of household income under Wisconsin marital property law is described in s. Tax 14.06(3)(c)2.

(b) Amounts added to Wisconsin adjusted gross income under s. 71.52(6), Stats., on a previous year's homestead credit claim and subsequently repaid may be subtracted from income for the year during which they are repaid.

(c) Scholarship and fellowship gifts or income included in Wisconsin adjusted gross income, which were included in income under s. 71.52(6), Stats., on a previous year's homestead credit claim may be subtracted from income for the current year.

Note to Revisor: 1) Remove the "1)" from the first note at the end of Tax 14.03.

2) Remove notes 2 to 5 at the end of Tax 14.03.

3) Insert the following 3 notes at the end of Tax 14.03:

Note: Section Tax 14.03 interprets s. 71.52(5) and (6), Stats.

Note: Section 71.01(6), Stats., was revised by 1997 Wis. Act 37, to include provisions of P.L. 105−34, relating to the exclusion of a gain from the sale of a personal residence, effective for sales after May 6, 1997, the same time as for federal purposes. Under the statutes in effect immediately prior to the enactment of 1997 Wis. Act 37, certain gains from the sale of a personal residence could be deferred under s. 1034 of the internal revenue code, and those gains were excludable from income under s. 71.52(6), Stats. In addition, a gain on the sale of a personal residence excluded under s. 121 of the internal revenue code, which was the once−in−a−lifetime exclusion for a qualifying sale by a person age 55 or older, was includable in income under s. 71.52(6), Stats.

Note: Section71.52(6), Stats., was amended by 1997 Wis. Act 27, effective for 1998 homestead credit claims filed in calendar year 1999 and thereafter. Under the statutes in effect immediately prior to the enactment of 1997 Wis. Act 27, scholarship and fellowship amounts described in sub. (5)(c) could not be excluded from income.

SECTION 20. Tax 14.04(2), (3)(b) and (c) and (4)(a), (b)1. and 2. and (c) are amended to read:

Tax 14.04(2) DEFINITION. Under s. 71.52(7), Stats., "property taxes accrued" means real or personal property taxes or monthly parking permit fees under s. 66.058(3)(c), Stats., exclusive of special assessments, delinquent interest and charges for service, levied under ch. 70, Stats., on a homestead owned by a claimant or a member of the claimant's household, less the tax credit ~~for general property tax relief~~, if any, afforded in respect of the property by s. 79.10, Stats. With respect to sub. (3)(e), "property taxes accrued" means the property taxes accrued levied on the former homestead owned by the claimant.

(3)(b) The property taxes ~~levied~~ accrued on a homestead or former homestead for the year to which a claim relates need not be paid prior to filing a homestead credit claim. The fact that the property taxes ~~on a claimant's~~ accrued on the homestead or former homestead are delinquent for years prior to the year to which a claim relates does not disqualify the claimant.

(c) "Property taxes accrued" includes personal property taxes assessed on a homestead or former homestead that is constructed on leased land or assessed on a mobile home owned by the claimant or a member of the claimant's household. "Property taxes accrued" also includes mobile home parking permit fees assessed under s. 66.058(3)(c), Stats., for a mobile home owned by the claimant or a member of the claimant's household.

Note to Revisor: 1) In sub. (3), add periods after the subdivision numbers, 5 times.

2) Replace the example at the end of sub. (3)(e), incorrectly labeled 1) and 2), with the following:

Example: A claimant moves on July 1, 1997, from the homestead she owns to an apartment that is exempt from property taxes. She has listed her former homestead for sale with a realtor. While continuing to reside in the apartment, she sells the former homestead; the date on the closing agreement is May 31, 1998. The property taxes accrued on the former homestead are $2,400 for 1997 and the prorated property taxes on the closing agreement are $1,000.

The claimant may file a 1997 homestead credit claim, based on the 1997 property taxes accrued of $2,400 for the entire year. She may also file a 1998 claim, based on the property taxes accrued of $1,000, prorated from January 1, 1998, to the date of the sale.

(4)(a) Except as provided in pars. (b) and (c), a claimant who claims property taxes accrued shall submit with the homestead credit claim a copy of the property tax bill, or if not available, a substitute for the property tax bill containing equivalent information to that appearing on the original property tax bill. ~~If the claimant presents the claim in person to an authorized representative of the department and wishes to retain the original tax bill but is unable to provide a copy, and if the department's representative is unable to produce a copy of the tax bill, an indication that the representative has inspected the tax bill shall satisfy this requirement. In this event, the department's representative shall enter information on the face of Schedule H indicating that the representative has examined the tax bill and verified the tax, followed by the representative's signature.~~

(b)1. The closing agreement from the sale of the homestead~~;~~.

2. The property tax bill for the year prior to the year to which the claim relates~~;or~~.

(c) If a claimant's homestead is a mobile home owned by the claimant or a member of the claimant's household, on which parking permit fees are assessed under s. 66.058(3)(c), Stats., proper verification of property taxes accrued shall be a copy of the parking permit fee statement issued by an authorized representative of the municipality in which the mobile home was located, or if the claimant paid rent for the land on which the mobile home was located and also paid parking permit fees to a landlord, a statement of the parking permit fees paid to the landlord, signed by the landlord, such as a ~~Wisconsin department of revenue~~ form I–017, "Rent Certificate."

SECTION 21. Tax 14.04(5) is repealed and recreated to read:

Tax 14.04(5) EFFECT OF RELIEF AND OTHER PUBLIC ASSISTANCE. (a) Under s. 71.54(2)(a), Stats., property taxes accrued shall be reduced by one–twelfth for each month or portion of a month for which the claimant received either $400 or more of county relief under s. 59.53(21), Stats., or any amount of aid to families with dependent children, or "AFDC" under s. 49.19, Stats., Wisconsin works payments for community service jobs or transitional placements under s. 49.147(4) or (5), Stats., or Wisconsin works payments as a caretaker of a newborn child under s. 49.148(1m), Stats. However, property taxes accrued need not be reduced if the assistance consists solely of foster care payments under s. 49.19(10)(a), Stats., non–legally responsible relative, or "NLRR" AFDC payments or kinship care payments.

(b) County relief and other cash public assistance payments that are repaid by the claimant in the same calendar year in which they are received are not considered payments for purposes of computing the one–twelfth reduction of property taxes accrued as required by par. (a).

SECTION 22. Tax 14.04(8)(a) and (b) are amended to read:

Tax 14.04(8)(a) ~~Under~~ Except as provided in par. (c), under s. 71.52(7), Stats., if a homestead is owned by 2 or more persons or entities as joint tenants or tenants in common or is owned as marital property or survivorship marital property and one or more ~~such persons, entities, or owners~~ of the co–owners is not a member of the claimant's household, property taxes accrued is that part of the property taxes accrued levied on the homestead, reduced by the tax credit under s. 79.10, Stats., that reflects the ownership percentage of the claimant and the claimant's household.

(b) ~~If~~ Except as provided in par. (c), if a qualified claimant residing in a co–owned homestead pays the ~~homestead~~ property taxes accrued for a co–owner not residing in the homestead and not claiming property taxes accrued under s. 71.54(2)(c)2., Stats., and sub. (3)(e), the claimant ~~shall be entitled to~~ may claim a homestead credit based upon both the claimant's ~~appropriate~~ proportionate share of "property taxes accrued" as described in par. (a) and "gross rent" for the ~~homestead~~ property taxes accrued paid on behalf of each absent owner, as provided in s. Tax 14.05(3)(c). On the other hand, if a qualified claimant residing in a co–owned homestead pays the ~~homestead~~ property taxes accrued for a co–owner who also resides in the homestead but ~~who~~ is not a member of the payor's household, or who is claiming property taxes accrued under s. 71.54(2)(c)2., Stats., and sub. (3)(e), each co–owner may file a claim based upon that ~~part~~ portion of the property taxes accrued that reflects the ownership percentage of each claimant and his or her household.

Note to Revisor: Replace the 3 examples at the end of sub. (8)(b) with the following:

Examples: 1) A, B and C each own a one–third interest in a dwelling. A and B are married to each other and live in the dwelling; C lives elsewhere. A and B both qualify for homestead credit and pay all of the property taxes accrued, which are $1,800.

Either A or B may claim a homestead credit based upon "property taxes accrued" of $1,200, their two–thirds share, plus "gross rent" of $600, since they pay C's one–third share of the property taxes.

If C had also occupied the homestead, A and B could have claimed only $1,200 of "property taxes accrued" and no "gross rent," even though they paid the entire $1,800. In addition, C could have filed a claim if otherwise qualified, based upon "property taxes accrued" of $600.

2) A mother and son each own a one–half interest in a dwelling occupied solely by the mother, who qualifies for homestead credit. The son pays all of the property taxes accrued on the dwelling.

The mother may claim a homestead credit based upon one–half of the property taxes accrued.

3) A brother and sister both qualify for homestead credit and own 75% and 25% interests, respectively, in a homestead they both occupy. The brother pays all of the property taxes accrued on the homestead.

Each may claim a homestead credit based upon the portion of property taxes accrued reflecting their ownership percentage.

SECTION 23. Tax 14.04(8)(c) is created to read:

Tax 14.04(8)(c) Under s. 71.52(7), Stats., if a claimant has inherited a partial ownership interest in a homestead, is entitled to possession of the property and is required by the terms of the will that transferred the ownership to pay all of the property taxes on the homestead, the claimant may claim a homestead credit based upon the entire amount of property taxes accrued on the homestead.

SECTION 24. Tax 14.04(9)(a) and (b), (10)(a) and (11) are amended to read:

Tax 14.04(9)(a) Under s. 71.52(7), Stats., if a claimant sells or purchases a homestead during the year to which a claim for homestead credit relates, the property taxes accrued shall be prorated for the time the seller or ~~the~~ buyer both owned and occupied the homestead during the year. The seller may use the closing agreement, the property tax bill for the year prior to the year to which the claim relates~~,~~ or the property tax bill for the year to which the claim relates as the basis for computing allowable ~~taxes~~ property taxes accrued. The purchaser may use only the property tax bill for the year to which the claim relates as the basis for computing allowable ~~taxes~~ property taxes accrued.

(b) Except as provided under s. 71.54(2)(c)2., Stats., and sub. (3)(e), if a seller moved from the homestead or established a homestead elsewhere before the closing date shown on a closing agreement and the property taxes are prorated on the agreement to the closing date, the property taxes shall be further prorated for homestead credit purposes to consider in the year of sale only the property taxes ~~accrued during~~ for the period the seller maintained a homestead on the property.

Note to Revisor: Replace the example at the end of sub. (9) with the following:

Example: Ownership of a homestead is transferred on June 30. The prorated property taxes for 6 months on the closing agreement are $1,200. The seller moves from that homestead to a new homestead on May 31.

The portion of prorated property taxes allowable to the seller is $1,000, which is the property taxes from January 1 to May 31 rather than the $1,200 shown on the closing agreement.

(10)(a) *Not part of a farm.* Under s. 71.52(3) and (7), Stats., if a homestead is not part of a farm, property taxes accrued for land are limited to the property taxes on up to one acre of land which surrounds the homestead dwelling and is reasonably necessary to the use of the dwelling as a home. A parcel of land separated from the homestead parcel by such things as a street, river~~,~~ or utility right−of−way shall be considered to be a part of the homestead parcel.

(11) MULTIPURPOSE AND MULTIDWELLING BUILDINGS. Under s. 71.52(7), Stats., property taxes accrued on a homestead that is part of a multipurpose or multidwelling building are the ~~taxes~~ property taxes accrued on the ~~part~~ portion occupied as a principal residence, based ~~on~~ upon a percentage of the total ~~taxes~~ property taxes accrued on the multipurpose or multidwelling building~~,~~ and ~~the amount computed using~~ the same percentage of the ~~taxes~~ property taxes accrued on the land surrounding it which otherwise qualifies as described in sub. (10). Property used partly as a homestead and partly for any business purpose, other than farming, for which a deduction is allowed or allowable for income tax purposes is multipurpose property. Property used partly as a homestead and partly as living quarters rented to others is multidwelling property. A building divided into ~~two~~ 2 units, one of which is the homestead of a claimant and the other of which is the living quarters of a person who does not pay rent is multidwelling property, even though there is no business or rental use.

Note to Revisor: 1) Replace the 4 examples at the end of sub. (11) with the following:

Examples: 1) A claimant was a homeowner who as a salesperson used one room of the 8−room house exclusively for business activities. Property taxes accrued for the year were $1,600.

The claimant may claim only seven−eighths of the property taxes accrued, or $1,400, in the computation of allowable homestead credit, since the other one−eighth, or $200, constitutes business taxes.

2) Assume the same facts as in example 1, except that the room was not used exclusively for business. No deductions would be allowable for income tax purposes and the full $1,600 of property taxes accrued could therefore be claimed in the computation of allowable homestead credit.

3) A claimant owned a duplex, lived in one of the 2 equal−sized units and rented out the other unit. Property taxes accrued for the year were $2,400.

Only $1,200, representing the property taxes accrued on the claimant's principal dwelling, may be claimed in the computation of allowable homestead credit.

4) Assume the same facts as in example 3, except that the claimant lived in one unit and the claimant's son or daughter lived in the other unit but was not required to pay rent. The claimant nevertheless may claim only $1,200 of the property taxes accrued.

2) Replace the example at the end of sub. (12) with the following:

Example: A widow and her son reside in the same homestead. Prior to the year of the claim, the widow transferred the property to her son by quit−claim deed but retained a life estate in the property. She pays the property taxes, but the property tax bill comes in her son's name.

If otherwise qualified, the widow may file a claim for homestead credit based upon the entire amount of property taxes accrued. The son may not claim homestead credit based upon any portion of the property taxes accrued on the homestead even though he resides in the property and is otherwise qualified.

3) Remove the "1)" from the first note at the end of Tax 14.04.

4) Remove notes 2 to 4 at the end of Tax 14.04.

5) Insert the following 3 notes at the end of Tax 14.04:

Note: Section Tax 14.04 interprets ss. 71.52(3) and (7) and 71.54(2)(a) and (c)2., Stats.

Note: Section 71.54(2)(a)(intro.), Stats., was amended by 1995 Wis. Act 27, effective July 28, 1995, to reference "relief from any county under s. 59.07(154)," Stats. (s. 59.07(154), Stats., was renumbered s. 59.53(21), Stats., by 1995 Wis. Act 201, effective September 1, 1996). Section 71.54(2)(a)(intro.), Stats., was again amended, by 1995 Wis. Act 289, effective July 1, 1996, to provide for a one−twelfth reduction of property taxes accrued for months a claimant received Wisconsin works under s. 49.147(4) or (5), Stats. Prior to the enactment of 1995 Wis. Acts 27 and 289, the county relief reference was to "general relief from any municipality or county," and there was no reference to Wisconsin works because that program did not exist.

Note: Section 71.54(2)(a)(intro.), Stats., was amended by 1999 Wis. Act 9, effective for 2000 homestead credit claims filed in calendar year 2001 and thereafter, to require a one−twelfth reduction of property taxes accrued for months a claimant received Wisconsin works payments as a caretaker of a newborn child under s. 49.148(1m), Stats. Under the statutes in effect immediately prior to the enactment of 1999 Wis. Act 9, the reduction was not required for receipt of those payments.

SECTION 25. Tax 14.05(2) is repealed and recreated to read:

Tax 14.05(2) DEFINITIONS. (a) "Gross rent" has the meaning specified in s. 71.52(2), Stats. Gross rent includes payments by a claimant to the landlord for items normally associated with the occupancy of a homestead, such as a garage or parking space, appliances, furniture or utilities. However, payments for food, medical services or other personal services are expressly excluded under s. 71.52(2), Stats. In situations where charges for food and services are subtracted from amounts paid to a landlord, gross rent is commonly referred to as "rent paid for occupancy."

(b) "Rent constituting property taxes accrued" has the meaning specified in s. 71.52(8), Stats.

SECTION 26. Tax 14.05(3)(b) is repealed.

SECTION 27. Tax 14.05(3)(c) and (d) are renumbered Tax 14.05(3)(b) and (c) and as renumbered Tax 14.05(3)(b) is amended to read:

Tax 14.05(3)(b) Property taxes accrued on a claimant's homestead not owned by the claimant or a member of the claimant's household, which are paid by the claimant on behalf of an owner who does not reside in the homestead and who does not claim property taxes accrued under s. 71.54(2)(c)2., Stats., shall be considered gross rent.

SECTION 28. Tax 14.05(4)(a), (b), (c) and (e) are amended to read:

Tax 14.05(4)(a) Except as provided in pars. (e) and (f), if a claimant claims rent constituting property taxes accrued the claimant and the landlord shall complete ~~Wisconsin department of revenue~~ form I−017, "Rent Certificate," and the claimant shall submit it with ~~Schedule~~ schedule H. The department is not precluded from requesting additional documentation to verify rent paid in cases it deems appropriate.

(b) If a claimant ~~rents~~ pays rent for more than one homestead during a year, a separate rent certificate shall be completed for each homestead for which the claimant wishes to claim a homestead credit, and the claimant shall submit all rent certificates together with a single ~~Schedule~~ schedule H.

(c) ~~Landlords~~ A landlord shall determine the reasonable value of food, medical services~~,~~ and other personal services such as laundry, transportation, counseling, grooming, recreational~~,~~ and therapeutic services provided to ~~the~~ a claimant in addition to occupancy rights and ~~shall~~ subtract those amounts from total rent indicated on the rent certificate, to determine rent paid for occupancy. ~~If heat is included in the cost of the rent, landlords shall fill in the rent paid for occupancy on the line of the rent certificate so designated, or if heat is not included, they shall fill in the rent paid for occupancy on that designated line~~ The landlord shall also indicate whether heat was included or not included in the rent by checking the appropriate box on the rent certificate.

(e) If a claimant is unable to obtain a rent certificate from a landlord, proper rent receipts, money order receipts, cancelled checks~~,~~ or cancelled share drafts substantiating amounts paid shall be acceptable evidence of gross rent paid. The claimant shall ~~attach a statement to the homestead credit claim giving the name and address of the landlord, the address of the homestead for which credit is claimed, an explanation of the inability of the claimant to obtain a rent certificate, a list of food, medical services, and other personal services as described in par. (c) provided by the landlord, and a statement as to whether heat was included in the rent paid to the landlord, as evidence of rent constituting property taxes accrued.~~ also include a rent certificate on which all lines except the signature line have been filled in, or a statement providing the same information as that requested on the rent certificate. The statement or rent certificate shall indicate whether heat was included in the rent, and whether food or services as described in par. (c) were provided and if so the estimated value of the food and services provided. The statement or top portion of the rent certificate should be marked with a comment such as "*Landlord Refuses to Sign*."

SECTION 29. Tax 14.05(5) is repealed and recreated to read:

Tax 14.05(5) EFFECT OF RELIEF AND OTHER PUBLIC ASSISTANCE. (a) Under s. 71.54(2)(a), Stats., rent constituting property taxes accrued shall be reduced by one−twelfth for each month or portion of a month for which the claimant received either $400 or more of county relief under s. 59.53(21), Stats., or any amount of aid to families with dependent children, or "AFDC" under s. 49.19, Stats., Wisconsin works payments for community service jobs or transitional placements under s. 49.147(4) or (5), Stats., or Wisconsin works payments as a caretaker of a newborn child under s. 49.148(1m), Stats. However, rent constituting property taxes accrued need not be reduced if the assistance consists solely of foster care payments under s. 49.19(10)(a), Stats., non−legally responsible relative, or "NLRR" AFDC payments or kinship care payments.

(b) County relief and other cash public assistance payments that are repaid by the claimant in the same calendar year in which they are received are not considered payments for purposes of computing the one−twelfth reduction of rent constituting property taxes accrued as required by par. (a).

SECTION 30. Tax 14.05(7), (8)(a), (b), (c) and (d)(intro.), 1., 2. and 3., (9)(a), (12) and (13)(title) are amended to read:

Tax 14.05(7) NON−ARM'S LENGTH RENTAL. ~~Section~~ Under s. 71.55(8), Stats., ~~provides "In any case in which~~ if a homestead is rented ~~by a person from another person~~ under circumstances deemed by the department ~~of revenue~~ to be not at arm's length, it may~~, with the aid of its property tax bureau,~~ determine rent constituting property taxes accrued as at arm's length~~, and, for purposes of this subchapter, such determination shall be final.".~~ The department may ~~determine rent constituting property taxes accrued as at arm's length~~ make this determination when the amount claimed is in excess of fair rental value. However, since under s. 71.52(2), Stats., "gross rent" is limited to rental actually paid, the department may not increase the rent constituting property taxes accrued to arm's length rental if the rent paid was at less than fair rental value.

Note to Revisor: Replace the example at the end of sub. (7) with the following:

Example: A claimant files a claim with a rent certificate showing rent paid for occupancy of $7,200, or $600 per month. Investigation by the Department of Revenue discloses the rent is too high for the locality and dwelling involved, and the landlord is financially dependent on others for support and is related to the claimant. The department determines that the fair rental value of the claimant's homestead for the year of the claim was $300 per month, or $3,600 for the year. No utilities, food or services were furnished by the landlord.

Allowable rent constituting property taxes accrued is $900, which is 25% of $3,600.

(8)(a) Under s. 71.53(2)(e), Stats., no claim for homestead credit may be allowed if a claimant resided for the entire calendar year to which the claim relates in housing which was exempt from taxation under ch. 70, Stats., other than housing for which payments in lieu of taxes are made under s. 66.40(22), Stats., except as provided under s. 71.54(2)(c)2., Stats. Under s. 71.54(2)(c)2., Stats., if a claimant moves to

tax−exempt housing, a claim for homestead credit may be allowed based ~~on~~ upon property taxes accrued on the claimant's former homestead under certain conditions. Those conditions are explained in s. Tax 14.04(3)(e).

(b) Under ~~s.~~ ss. 71.53(2)(e) and 71.54(2)(c)1., Stats., if a claimant resided for part of the calendar year to which a claim for homestead credit relates, in a homestead which was either subject to taxation under ch. 70, Stats., or exempt from taxation under ch. 70, Stats., but for which ~~payment~~ payments in lieu of taxes ~~was~~ were made under s. 66.40(22), Stats., the property taxes accrued or rent constituting property taxes accrued or both ~~on~~ for that homestead are allowed for that ~~part~~ portion of the year.

(c) Payments ~~required to be made~~ in lieu of taxes made under s. 66.40(22), Stats., as provided in ~~par.~~ pars. (a) and (b), are made by most facilities ~~that are~~ licensed with the state of Wisconsin as "housing authorities." Rent paid to those housing authorities may be used to determine gross rent and rent constituting property taxes accrued. However, other types of exempted housing which make payments in lieu of taxes do not make the payments under s. 66.40(22), Stats., and therefore rent paid to those types of exempted housing may not be used to determine gross rent and rent constituting property taxes accrued.

(d)(intro.) ~~Examples of other types of exempted~~ Types of tax−exempt housing other than housing authorities include:

1. Federal ~~low income~~ low−income housing under the ~~H.U.D.~~ housing and urban development, or "H.U.D." program~~;~~.
2. Student dormitories owned by nonprofit educational institutions~~;~~.
3. Housing units of religious organizations~~; and~~.

(9)(a) ~~Claimants~~ Persons sharing living expenses for a rented homestead ~~with one or more joint occupants age 18 or older and~~, who are otherwise eligible for the homestead credit and who are not members of the ~~claimant's~~ same household, shall each be entitled to claim a portion of the rent paid for occupancy of the homestead. However, the total claims of the joint occupants for rent paid for occupancy may not exceed 100% of the rent paid to the landlord for occupancy, as shown on the rent certificate. The amount of rent paid for occupancy shall be the ratio which the contribution of the claimant or claimant's household to the cost of shared living expenses, such as rent, food, utilities~~,~~ and supplies, bears to the total cost of the shared living expenses.

Note to Revisor: Replace the example at the end of sub. (9)(a) with the following:

Example: X, Y and Z are 3 unrelated joint occupants of a rental unit who share expenses as follows:

Living Expenses	X	Y	Z	Total
Rent for occupancy	$5,400	—	—	$5,400
Food	—	$1,350	$1,350	$2,700
Utilities	—	$ 900	—	$ 900
Total living expenses	$5,400	$2,250	$1,350	$9,000
% of total	60%	25%	15%	100%

Since X paid 60% of the shared living expenses, X's share of rent paid for occupancy is 60% of $5,400, or $3,240. Likewise, rent paid for occupancy for Y is 25% of $5,400, or $1,350, and for Z it is 15% of $5,400, or $810. Total rent paid for occupancy for all 3 claimants is $5,400, as shown on the rent for occupancy line.

(12) SHARECROPPERS. "Rent constituting property taxes accrued" of a person sharing the costs or proceeds or both from the operations of a farm with the owner of the farm property in consideration for use of the homestead, land, machinery~~,~~ or equipment equals 25% of the owner's share of the net proceeds applicable to occupancy of the homestead, or 20% if heat is included in the cost of the rent.

Note to Revisor: Replace the example at the end of sub. (12) with the following:

Example: A sharecropper resides on and operates a 120 acre dairy farm. The landlord and the sharecropper share equally the gross receipts from crop sales, $10,000, the gross milk receipts, $40,000, and the cost of seed and feed, $20,000. The landlord furnishes the land, buildings and machinery, for which annual allowable depreciation is $6,000. The landlord pays for the heat. In this situation, rent constituting property taxes accrued for the sharecropper equals 20% of the owner's share of the proceeds less the value of the nonoccupancy items furnished by the landlord, as follows:

Landlord's share of crop receipts	$5,000	
Landlord's share of milk receipts	$20,000	$25,000

Less nonoccupancy items furnished by landlord: Landlord's share of seed and feed Depreciation of buildings not including the dwelling, and machinery	$10,000 $ 6,000	 $16,000
Gross rent		$ 9,000 x 20%
Rent constituting taxes accrued		$1,800

(13)(title) ~~LOW INCOME~~ LOW–INCOME HOUSING.

SECTION 31. Tax 14.05(13)(a)(intro.) and (b) are renumbered Tax 14.05(13)(b) and (c) and as renumbered Tax 14.05(13)(b) is amended to read:

Tax 14.05(13)(b) ~~If a~~ A landlord ~~receives~~ may receive both payments from a claimant and subsidy payments from a governmental agency ~~and applies them toward rental of a homestead, and if the application of the~~ for rental of the claimant's homestead. If the allocation of the subsidy payments to food, medical services~~, and~~ or other personal services as described in ~~sub. (2)(a)~~ s. 71.52(2), Stats., furnished by the landlord is not specified under the terms of an agreement with the ~~paying~~ governmental agency, the portion of the rent paid for occupancy eligible for the homestead credit ~~may be computed as follows:~~ shall be the total rent paid for occupancy multiplied by a fraction, the numerator of which is the amount paid by the claimant and the denominator of which is the total amount paid including governmental subsidies.

Note to Revisor: Replace the example at the end of sub. (13)(a) before renumbering with the following example at the end of sub. (13)(b) as renumbered:

Example: A total of $5,400 is paid to a claimant's landlord for the year on behalf of the claimant, $1,800 by the claimant and $3,600 by a governmental agency. The value of food provided is $600 and no services are provided.

Qualifying rent paid for occupancy is $1,600, computed as follows: $4,800 x [$1,800 ÷ $5,400]. The $4,800 is the total amount paid, $5,400, less the $600 for food. The $1,800 is the amount the claimant paid and the $5,400 is the total amount paid.

SECTION 32. Tax 14.05(13)(a)1., 2. and 3. are repealed.

SECTION 33. Tax 14.05(13)(a) is created to read:

Tax 14.05(13)(a) Indirect payments of rent, such as a subsidy payment from a governmental agency for low–income housing, are not includable in determining gross rent.

SECTION 34. Tax 14.05(14)(a)1. and 2. are amended to read:

Tax 14.05(14)(a)1. A standard rate of ~~$40~~ $100 per week but not more than the actual rent paid.

2. The percentage of building occupancy expenses method ~~as computed in the example at the end of this subsection~~. Under this method, the ratio that a nursing home's or a long–term care facility's building occupancy expenses for a year bears to gross income received in that year, both directly from residents and indirectly from governmental aid, is determined. This ratio is applied to a resident's total direct payments for a year for which a homestead credit claim is filed, yielding the portion of the payments constituting rent paid for occupancy. This ratio shall be determined from the most recent income and expense data available at the time a rent certificate is prepared, preferably using data from the same year for which the homestead credit is claimed. The building occupancy expenses claimed shall be limited to the expenses attributable to real estate and furnishings only, such as property taxes, interest, lease or rent expenses, depreciation, upkeep and repairs and utilities.

Note to Revisor: Insert the following example at the end of sub. (14)(a)2.:

Example: The following format may be used to compute a resident's rent paid for occupancy; the worksheet is filled in as an example of how to compute the percentage:

1. Building occupancy expenses – real estate and furnishings only:

a. Property taxes	$ 30,000
b. Interest	70,000
c. Lease or rent expenses	10,000
d. Depreciation	60,000
e. Upkeep and repairs	10,000

f. Utilities	20,000
g. Total building occupancy expenses	$ 200,000
2. Gross income, including indirect payments	$1,600,000
3. Line 1.g divided by line 2 equals the percentage rate	12.5%

The percentage rate determined above is to be multiplied by the total rent collected as entered on the rent certificate prepared for a resident filing a homestead credit claim, and the amount so determined is to be entered on the rent certificate as rent paid for occupancy. Assuming a resident's total direct payments for the year were $36,000, rent paid for occupancy would be $4,500, which is 12.5% of $36,000.

SECTION 35. Tax 14.05(14)(b) is renumbered Tax 14.05(14)(b)1.

SECTION 36. Tax 14.05(14)(b)2. is created to read:

Tax 14.05(14)(b)2. A person living in a nursing home who received medical assistance under s. 49.45, Stats., during the year to which the claim relates but is not receiving the medical assistance at the time of filing a homestead credit claim may claim the homestead credit if otherwise eligible. In this situation, amounts paid by medical assistance are not includable in determining rent paid for occupancy.

Note to Revisor: 1) Remove the example at the end of sub. (14)(c).

2) Remove the "1)" from the first note at the end of Tax 14.05.

3) Remove notes 2 and 3 at the end of Tax 14.05.

4) Insert the following 4 notes at the end of Tax 14.05:

Note: Section Tax 14.05 interprets ss. 71.52(2) and (8), 71.53(2)(e) and (f), 71.54(2)(a) and (c) and 71.55(2) and (8), Stats.

Note: Section 71.54(2)(a)(intro.), Stats., was amended by 1995 Wis. Act 27, effective July 28, 1995, to reference "relief from any county under s. 59.07(154)," Stats. (s. 59.07(154), Stats., was renumbered s. 59.53(21), Stats., by 1995 Wis. Act 201, effective September 1, 1996). Section 71.54(2)(a)(intro.), Stats., was again amended, by 1995 Wis. Act 289, effective July 1, 1996, to provide for a one–twelfth reduction of rent constituting property taxes accrued for months a claimant received Wisconsin works under s. 49.147(4) or (5), Stats. Prior to the enactment of 1995 Wis. Acts 27 and 289, the county relief reference was to "general relief from any municipality or county," and there was no reference to Wisconsin works because that program did not exist.

Note: Section 71.54(2)(a)(intro.), Stats., was amended by 1999 Wis. Act 9, effective for 2000 homestead credit claims filed in calendar year 2001 and thereafter, to require a one–twelfth reduction of rent constituting property taxes accrued for months a claimant received Wisconsin works payments as a caretaker of a newborn child under s. 49.148(1m), Stats. Under the statutes in effect immediately prior to the enactment of 1999 Wis. Act 9, the reduction was not required for receipt of those payments.

Note: The standard rate of $100 per week for rent paid for occupancy by residents of nursing homes or long–term care facilities became effective with rent paid for calendar year 2000. For rent paid for calendar years 1999 and prior, the standard rate was $40 per week.

SECTION 37. Tax 14.06(title), (1) and (3)(c)(intro.) are amended to read:

Tax 14.06(title) **Marriage, separation~~,~~ or divorce during a claim year**.

(1) PURPOSE. This section describes the qualifications for a homestead credit and the computation of household income, property taxes accrued~~,~~ and rent constituting property taxes accrued of a claimant who becomes married or divorced during the year to which a homestead credit claim relates or whose spouse occupies a separate dwelling for any part of a claim year.

Note to Revisor: Replace the example at the end of sub. (2)(c) with the following:

Example: X marries Y on September 1, and they decide that X is to be the claimant. Prior to the marriage, X pays gross rent of $250 per month and Y pays gross rent of $350 per month. They pay gross rent of $500 per month for their jointly occupied apartment after the marriage. Heat is not included at any of the dwellings. X's income is $4,000 prior to the marriage, and X's services and property generate marital property income of $2,000 after the marriage. Y's income is $10,000 prior to the marriage, and Y's services and property generate marital property income of $5,000 after the marriage. There are no dependents.

In this situation, household income reportable by X is $11,000, consisting of X's $4,000 of income prior to the marriage plus the $7,000 income of both X and Y after the marriage. Rent constituting property taxes accrued which may be claimed by X is $1,000, which is 25% of the sum of X's rent of $250 per month for 8 months, or $2,000, and 4 months rent at $500 per month after the marriage, or $2,000, totaling $4,000 for the year. Since Y is not the claimant, Y's rent of $350 per month and income of $10,000 for the 8 months prior to the marriage are not considered in computing the homestead credit.

(3)(c)(intro.) In the event a husband and wife occupy separate dwellings or become divorced during a claim year, household income is determined under s. 71.52(5), Stats., under Wisconsin income tax law~~,~~ and under marital property law as provided in ch. 766, Stats., except that marital property law does not apply if one of the spouses is not domiciled in Wisconsin during the period of time they occupy separate dwellings. Household income shall be determined as follows:

Note to Revisor: 1) Remove the "1)" from the first note at the end of Tax 14.06.

2) Replace note 2 at the end of Tax 14.06 with the following:

Note: Throughout s. Tax 14.06, it has been assumed that a dissolved marriage was dissolved by a decree of divorce. Under s. 766.01(7), Stats., the dissolution of a marriage may also be by annulment or decree of invalidity, or by entry of a decree of legal separation or separate maintenance. The computation of household income, property taxes accrued and rent constituting property taxes accrued is the same under any of these types of dissolutions.

3) Remove note 3 at the end of Tax 14.06.

4) Insert the following note at the end of Tax 14.06:

Note: Section Tax 14.06 interprets ss. 71.52(5), (7) and (8) and 71.53(1)(c), Stats.

Initial Regulatory Flexibility Analysis

This proposed rule order does not have a significant economic impact on a substantial number of small businesses.

Fiscal Estimate

The proposed rule order would increase the "standard rate" used to determine rent paid by nursing home residents for purposes of the Homestead credit from $40 per week to $100 per week. The effect of this change would be to increase, for any nursing home resident using the standard rate in the Homestead calculation, the credit received by $499. It is not known how many nursing home residents claim the Homestead credit, nor how many of them use the standard rate, instead of some other means of determining rent, in the Homestead calculation. Therefore, the fiscal effect of this rule change is not known. However, Homestead is limited to low–income persons and the credit is not allowed to nursing home residents who receive Medicaid; these restrictions make it unlikely that the number of persons affected by this rule change is more than 1,000. Thus, it is believed this rule will increase Homestead expenditures by less than $500,000.

Other changes in this proposed rule would update language and provisions relating to public assistance, gains from the sale of homes and the imposition of interest; would reflect proper filing and adjustment procedures, and deadlines; and would conform style and language to Legislative Council Rules Clearinghouse standards. These other changes have no fiscal effect.

Notice of Hearing

Workforce Development

[CR 00–46]

Notice is hereby given that pursuant to ss. 103.66 and 104.04, Stats., the Department of Workforce Development proposes to hold a public hearing to consider the repeal and recreation of s. DWD 272.085 and the creation of s. DWD 270.085, relating to student worklike activities that do not constitute employment.

Hearing Information

March 30, 2000 **Room 400X, GEF #1 Bldg.**
Thursday **201 East Washington Ave.**
10:00 a.m. **MADISON, WI**

Interested persons are invited to appear at the hearing and will be afforded the opportunity to make an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views, and suggested rewording in writing.

An accessible entrance to the building is available via a ramp from the corner of Washington Avenue and Webster Street to the Butler Street entrance. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 267–9403 at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audiotape format will be made available on request to the fullest extent possible.

Analysis Prepared by the Dept. of Workforce Development

Statutory authority: ss. 103.66 and 104.04, Stats.

Statutes interpreted: ss. 103.66 and 104.04, Stats.

The state's administrative rules on child labor currently do not contain specific provisions on the status of students who perform services such as helping in the lunchroom or cafeteria or performing minor clerical work in the school office or library. The field operations handbook of the Wage and Hour Division of the U.S. Department of Labor provides that student activities of this type should not be treated as employment under the wage and hour laws as long as certain conditions are met. This rule adopts a policy similar to the federal standards.

The proposed rule allows a student to help in the school lunchroom, clean a classroom, act as a hall monitor, or perform minor clerical work in the school office or library for periods of one hour per day or less. Other student worklike activities are permissible and not sufficient to constitute employment if they have an educational benefit for the student, do not add more than one hour to the school day, and do not displace a regular employe. Student worklike activities that meet these criteria are not subject to the minimum wage requirements.

Text of Rule

SECTION 1. DWD 270.085 is created to read:

DWD 270.085 Student worklike activities. (1) SPECIFIC ALLOWABLE ACTIVITIES. It is permissible under this chapter and not sufficient to constitute employment regardless of whether compensation is received when a student performs worklike activities in his or her own elementary or secondary school under the following conditions:

(a) The student helps in the school lunchroom or cafeteria, cleans a classroom, acts as a hall monitor, or performs minor clerical work in the school office or library.

(b) The student performs the activities in par. (a) for periods of an hour per day or less on days school is in session or for longer time periods on days that school is not in session so that the annual total time spent on the activities listed in par. (a) is no more than the equivalent of one hour per school day.

(2) CONDITIONS FOR OTHER STUDENT WORKLIKE ACTIVITIES. Student worklike activities in an elementary or secondary school other than those listed in sub. (1) are permissible under this chapter and will not be considered sufficient to constitute employment under the following conditions:

(a) The activity is basically educational, is conducted primarily for the benefit of the student, and comprises one of the facets of the educational opportunities offered to the student. The nonemployment status is not changed if the student also receives payment in order to have a more realistic worklike situation or as an incentive to the student.

(b) The time in attendance at school plus the time spent at the activity does not exceed the time that the student would be required to attend school under a normal academic schedule by more than one hour per day.

(c) The student does not displace a regular employe or reduce previously existing employment opportunities by performing work that would otherwise be performed by regular employes.

SECTION 2. DWD 272.085 is repealed and recreated to read:

DWD 272.085 Student activities and employment. (1) INDEPENDENT COLLEGES AND UNIVERSITIES. (a) Independent colleges and universities may employ full−time students who are 18 years of age and over for 20 hours per week or less at the established federal Fair Labor Standards Act rates.

(b) Students who work at independent colleges or universities for over 20 hours per week shall be paid at the rates established under s. DWD 272.03.

(2) ELEMENTARY AND SECONDARY SCHOOLS. Student activities that meet the criteria of s. DWD 272.085 are not covered by the minimum wage provisions of this chapter.

Initial Regulatory Flexibility Analysis

The proposed rule does not affect small business.

Fiscal Estimate

The proposed rule promotes educational opportunities for youth by allowing worklike activities under conditions that are intended to benefit the student. Schools have not been able to offer these opportunities in the past without being subject to child labor prohibitions and minimum wage requirements.

Contact Information

The proposed rule is available on the DWD web site at http://www.dwd.state.wi.us/dwd/hearings.htm. A paper copy may be obtained at no charge by contacting:

Elaine Pridgen, Office of Legal Counsel
Dept. of Workforce Development
P.O. Box 7946
Madison, WI 53707−7946

Telephone (608) 267−9403
Email: pridgel@dwd.state.wi.us

Written Comments

Written comments on the proposed rules received at the above address no later than **Friday, April 7, 2000**, will be given the same consideration as testimony presented at the hearing.

Notice of Submission of Proposed Rules to the Presiding Officer of each House of the Legislature, Under S. 227.19, Stats.

Please check the Bulletin of Proceedings for further information on a particular rule.

Employe Trust Funds (CR 98–169):
S. ETF 10.55 – Relating to the proper reporting of creditable service, earnings and participating employes of instrumentalities of two or more units of government when the joint instrumentality does not qualify as a separate employer for WRS purposes.

Natural Resources (CR 99–22):
S. NR 150.03 and ch. NR 170 – Relating to power plant siting.

Natural Resources (CR 99–155):
SS. NR 10.01, 10.27 and 10.28 – Relating to deer hunting in Council Grounds state park.

Public Service Commission (CR 99–140):
Ch. PSC 4 – Relating to implementing the Wisconsin Environmental Policy Act (WEPA).

ADMINISTRATIVE RULES FILED WITH THE REVISOR OF STATUTES BUREAU

The following administrative rules have been filed with the Revisor of Statutes Bureau and are in the process of being published. The date assigned to each rule is the projected effective date. It is possible that the publication of these rules could be delayed. Contact the Revisor of Statutes Bureau at (608) 266–7275 for updated information on the effective dates for the listed rules.

Agriculture, Trade and Consumer Protection (CR 99–133):

An order affecting ss. ATCP 105.009 and 105.23, relating to selling motor vehicle fuel below cost.

Effective 04–01–00.

Physical Therapists Affiliated Credentialing Board (CR 99–66):

An order affecting ss. PT 1.02, 2.01, 3.01, 4.01 and ch. PT 5, relating to the definition of physical therapy aide, the tests of English, written English and spoken English, general supervision of physical therapist assistants, and direct supervision of physical therapist assistants and physical therapy aides.

Effective 05–01–00.

Public Instruction (CR 99–30):

An order creating ch. PI 34, relating to teacher education program approval and licenses.

Part effective 05–01–00.
Part effective 07–01–00.
Part effective 07–01–04.

Revenue (CR 99–134):

An order creating s. Tax 11.96, relating to delivery of an ordinance to adopt or repeal a county or premier resort area tax.

Effective 05–01–00.

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